

Chapter VI

RELATIONS WITH OTHER UNITED NATIONS ORGANS

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INTRODUCTORY NOTE

Chapter XI of the provisional rules of procedure of the Security Council, entitled "Relations with other United Nations Organs", contains only rule 61, governing certain procedures to be followed by the Council for the election of members of the International Court of Justice. The present chapter, which bears the same title, is wider in scope, since it concerns itself with the relations of the Security Council with all other organs.

The chapter deals in parts I, II, III and IV with the relations of the Council with each of the principal organs of the United Nations, with the exception of the Secre-

tariat. Functions of the Secretariat in relation to the Council in so far as they are governed by the provisional rules of procedure are dealt with in chapter I, part IV. Material relating to the appointment of the Secretary-General under Article 97 will be found in part I of this chapter under the heading "Relations with the General Assembly". So far as organs of the United Nations other than principal organs are concerned, this chapter includes in part V material relating to the Military Staff Committee, which has been placed, by Articles 45, 46 and 47 of the Charter, in a special relation with the Security Council.

Part I

RELATIONS WITH THE GENERAL ASSEMBLY

NOTE

Part I of this chapter is devoted to relations of the Security Council with the General Assembly in cases where, under the Charter or Statute of the International Court of Justice, responsibility is either exclusive or shared; that is, where a final decision in a matter must, or must not, be made by one body without a decision being arrived at in the same matter by the other. Practices and proceedings of the Council in its relations with the Assembly in these cases fall into three groups. The first group includes cases where relations between the two organs are governed by provisions of the Charter limiting the exercise of authority by the General Assembly in respect of any dispute or situation while the Security Council is exercising the functions assigned to it by the Charter.¹ The other two groups concern matters governed by provisions of the Charter or Statute regulating the exercise of authority on certain matters by both organs acting jointly. The second group includes cases where the Security Council's decision must be taken before that of the General Assembly,² and the third group cases where the final decision depends upon action taken by both organs concurrently.³

In addition to cases in these three groups, part I contains material concerning the convocation of a special session of the General Assembly at the request of the Security Council.⁴ It also includes material regarding subsidiary organs established by the General Assembly and either specifically placed by the Assembly in special relation with the Security Council, or utilized by the

Council in connexion with a question on its agenda. Part I concludes with a chronological tabulation of recommendations to the Security Council adopted by the General Assembly in the form of resolutions.

Additional explanatory notes will be found at the beginning of sections A, C 1, D, E, F, and G.

A. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLE 12 OF THE CHARTER

"Article 12 of the Charter"

"1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

"2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters."

[*Note:* Section A brings together cases which bear on Article 12 (1) of the Charter. Several questions of practice are involved in these cases. The material has been arranged under the broad heading of Article 12 (1) rather than under distinctive headings of a narrower character in order to conserve the connected chain of proceedings whereby the material is the more readily followed in its context. The following are the subsidiary problems involved, and an indication is given of the relevant material:

(i) The meaning to be attached to the phrase: "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter".⁵

¹ Article 12 (1).

² Admission of new Members, Article 4 (2); appointment of the Secretary-General, Article 97; conditions of accession to the Statute of the International Court of Justice, Article 93 (2); and conditions under which a non-Member State, party to the Statute, may participate in electing members of the International Court of Justice, Statute, Article 4 (3). Cases in the second group concerning the admission of new Members to the United Nations are dealt with in their proper context in chapter VII.

³ Election of members of the International Court of Justice, Statute, Articles 4, 8, 10, 11 and 12.

⁴ Article 20.

⁵ See Case 1 (iv).

(ii) Requests by the Security Council to the General Assembly in accordance with the proviso of Article 12 (1).⁶

(iii) Retention on, or deletion of questions from, the agenda of the Council in relation to the power of the General Assembly

(a) To discuss a question⁷

(b) To make recommendations.⁸

Notifications to the General Assembly under Article 12 (2) by the Secretary-General, with the consent of the Council, of "matters relative to the maintenance of international peace and security which are being dealt with by the Security Council", and of matters with which the Council has ceased to deal, have been drafted on the basis of the "Summary Statement by the Secretary-General of matters of which the Security Council is seized and of the stage reached in their consideration" which is circulated each week under rule 11 of the provisional rules of procedure of the Council.

The agenda items listed in the notification issued prior to each session and the agenda items in the current "Summary Statement" have been the same, except that certain items in the Statement, such as the rules of procedure of the Council, the application of Articles 87 and 88 with regard to strategic areas, and applications for membership, are excluded from the notification, not being considered as "matters relative to the maintenance of international peace and security" for the purpose of Article 12 (2). The notification also lists any items with which the Council has ceased to deal since the previous session of the General Assembly.⁹

Since 1951, the notification has divided the matters being dealt with by the Council into two categories: first, matters which are being dealt with by the Council and which have been discussed during the period since the last notification, and second, matters of which the Council remains seized but which have not been discussed since the last notification.

In 1946 and 1947 the consent of the Council required by the provisions of Article 12 (2) was given at formal meetings.¹⁰ Since 1947 the consent of the Council has been obtained through the circulation by the Secretary-General to the members of the Council of copies of draft notifications.¹¹

CASE I (i)

At the 44th meeting on 6 June 1946, the Chairman of the Sub-Committee on the Spanish question (Australia) submitted to the Security Council the Sub-Committee's report,¹² which recommended as appropriate measures:

"(b) The transmitting by the Security Council to the General Assembly of the evidence and reports of this Sub-Committee together with the recommendation that, unless the Franco regime is withdrawn and the other conditions of political freedom set out in

the declaration are, in the opinion of the General Assembly, fully satisfied, a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco regime be terminated forthwith by each Member of the United Nations."

At the 45th meeting on 13 June 1946, the representative of Australia, as the Chairman of the Sub-Committee, submitted a draft resolution¹³ to adopt the recommendations of the Sub-Committee, subject to the addition to recommendation (b), after the words "each Member of the United Nations", of the following words: "or alternatively such other action be taken as the General Assembly deems appropriate and effective under the circumstances prevailing at the time". In this connexion, he stated:

"In my opinion, and I think this is the view of all members of the Sub-Committee, the adoption will represent no diminution of the powers of the Security Council, but will really represent an exercise by the Security Council of its power to recommend methods of adjustment or suitable procedures, and to refer a matter to other organs of the United Nations whenever the circumstances are thought fit by the Security Council."

The representative of the United States, in support of the suggested modification, observed:

". . . it would be inappropriate for the Council to prejudge the precise course of action which the General Assembly should take."

The representative of Egypt was of the opinion that:

". . . no Article of the Charter refers to recommendations to be made by the Council to the General Assembly, although Article 12 clearly mentions that recommendations may be made by the General Assembly to the Council.

"It is naturally within the rights of the Council to take up the whole matter and to make its own final decisions; but I should like to point out that if it chooses to do otherwise, and refers the matter to the General Assembly, with or without recommendations, the General Assembly's freedom of action cannot in any way be impaired."

The representative of the USSR, opposing the recommendations of the Sub-Committee, maintained that:

". . . A decision to refer the Spanish question to the Assembly would be incompatible with the authority of the Security Council."

At the 46th meeting on 17 June 1946, the representative of the United Kingdom stated:

". . . we should send the report and the material to the Assembly but not make any definite recommendations . . . Even if we make recommendations, even if we indicate what we think the Assembly ought to do, the Assembly is not bound to act on any recommendation of that kind."

He submitted an amendment to the Australian draft resolution to adopt the recommendations of the Sub-Committee, subject to the deletion of paragraph (b) after the words "reports of the Sub-Committee", and the addition of the words "together with the minutes of the discussion of the case by the Security Council".

The President, speaking as the representative of Mexico, and the representatives of Australia and France

¹³ 45th meeting: p. 326.

⁶ See Cases 1 (i), 2 (i).

⁷ Case 3.

⁸ See Cases 1 (ii), 1 (iii), 1 (iv), 2 (ii), and 4.

⁹ See, however, Case 1 (iv) for discussion on this question at the 79th meeting on 4 November 1946, and statement by the representative of Mexico on 10 July 1946, 50th meeting, p. 9.

¹⁰ 1946—77th meeting, p. 483. 1947—202nd meeting, p. 498.

¹¹ Circular issued on 14 September 1948 by Assistant Secretary-General, Department of Security Council Affairs.

¹² S/75, O.R., 1st year, 2nd series, Special Suppl., Report of the Sub-Committee on the Spanish Question.

expressed their disagreement with the amendment submitted by the United Kingdom.

At the 47th meeting on 18 June 1946, the representative of Poland stated that he, as a member of the Sub-Committee, had accepted the recommendations of the Sub-Committee in the interest of unanimity and with the proviso that:

"... acceptance of the Sub-Committee's recommendations should in no way prejudice the rights of the Security Council; nor should it ever be invoked as a precedent which would justify the Council, when faced with a difficult situation, in avoiding responsibility and referring the matter to another organ of the United Nations."

The representative of Australia, in connexion with the reference of the question to the General Assembly, observed that:

"... the Security Council has the right to adjust its procedures; to adopt procedures appropriate to the problem before it in order to find a true and just solution."

Decisions: *At the 47th meeting on 18 June 1946, the United Kingdom amendment was rejected by 2 votes in favour, 6 against, with 3 abstentions.*¹⁴

*After separate votes had been taken on each of the three recommendations of the Sub-Committee, the recommendation as a whole was put to the vote and failed of adoption. There were 9 votes in favour, 1 against (being that of a permanent member), with 1 abstention.*¹⁵

CASE 1 (ii)

At the 48th meeting on 24 June 1946, the representative of Poland submitted a draft resolution which provided, *inter alia*, that the Security Council "decides to keep the situation in Spain under continuous observation and keep the question on the list of matters of which it is seized...", that the Security Council "will take the matter up again not later than 1 September 1946, in order to determine what appropriate practical measures provided by the Charter should be taken".¹⁶

The representatives of Australia and the United Kingdom observed that, if the matter were retained on the agenda of the Council until the General Assembly met, there would be the danger that the Assembly might be prevented from making any recommendation on the matter, unless the item was removed from the agenda of the Council. The representative of the United Kingdom suggested the insertion, after the words in the draft resolution "decides to keep the situation in Spain under continuous observation and..." of the words "pending the meeting of the General Assembly next September".

The representative of Poland pointed out that it was not the intention of the draft resolution to prevent the General Assembly from discussing the matter or making recommendations. There was even the possibility that the Security Council might discuss the question during the meeting of the General Assembly and remove the item from its agenda, in order to let the Assembly act upon it. He believed that the United Kingdom amendment, if accepted, would divest the Security Council of its authority.

¹⁴ 47th meeting: p. 378.

¹⁵ 47th meeting: pp. 378-379.

¹⁶ 48th meeting: p. 389.

The representative of the USSR, in support of the draft resolution submitted by the representative of Poland, observed that, while the draft resolution did not contain any provision which would preclude the General Assembly from discussing the question, it proposed that the Security Council would decide what measures it should take when it returned to this question not later than 1 September 1946. He opposed the United Kingdom amendment, because he considered that:

"... it would be incorrect at the present time to agree on the one hand that the Spanish question remain on the agenda, and on the other hand to state that when the Security Council returns to this question it should transfer the Spanish question to the General Assembly. The one position excludes and contradicts the other."

The representative of France was of the opinion that the intention of the draft resolution was to keep the Spanish question under continuous observation by the Security Council until the question was taken up by the Council or the General Assembly, as the case might be. He could not agree with an interpretation that the General Assembly should be unable to take up the question itself, and he would oppose any text which would, in effect, prevent the General Assembly from considering the question at its next session.

The representative of the United States declared that he could not accept the draft resolution unless an amendment, similar to the one submitted by the representative of the United Kingdom, was adopted which would make it unequivocally clear that the General Assembly was entirely free to be seized of the question at its next session.

The President (Mexico) stated that:

"If the item is kept on the agenda, and if the Security Council is to exercise the functions assigned to it, some kind of action will be necessary; but merely to keep something, even this matter, on the agenda, is not to take action, and therefore not to exercise a function. Perhaps there will be an interpretation of Article 12 which will permit the matter to be kept on the agenda and at the same time leave the Assembly free to go into the matter..."

Decision: *At the 49th meeting on 26 June 1946, the Council adopted a draft resolution which, as amended, provided that the Security Council "decides to keep the situation in Spain under continuous observation and maintain it upon the list of matters of which it is seized..."*¹⁷

CASE 1 (iii)

At the 49th meeting on 26 June 1946, the representative of Australia submitted the following draft resolution:¹⁸

"That, in the opinion of the Security Council, the carrying of the resolution on the Spanish question, dated 26 June 1946, does not in any way prejudice the rights of the General Assembly under the Charter."

The representative of the USSR considered that the Australian draft resolution was unnecessary and that attempts to give a better or other definition of the rights

¹⁷ 49th meeting: pp. 400-401, 441-442. For full text, see chapter VIII, p. 307.

¹⁸ 49th meeting: p. 444.

and functions of the General Assembly, than that given in the Charter, were doomed to failure. He believed that the intention in presenting the draft resolution was probably to take advantage, in some way, of that statement later in order to place the Spanish question before the General Assembly for consideration, even if there had been no corresponding decision on the part of the Security Council.

The representative of the United States, in support of the Australian draft resolution, observed:

"My object is to prevent the Assembly from being blocked by action of this Council from considering a matter which it would otherwise have the right to consider . . ."

Decision: *At the 49th meeting on 26 June 1946, the draft resolution submitted by the representative of Australia was not adopted. There were 9 votes in favour and 2 against (1 being that of a permanent member).*¹⁹

CASE 1 (iv)

At the 78th meeting on 30 October 1946, the representative of Poland stated that his delegation intended to present to the General Assembly draft resolutions containing certain recommendations on the Spanish question. He observed that he did not want to prejudice in any way the interpretation of Article 12 and that, in order to dispel any doubts as to whether the General Assembly was free to make recommendations on the matter, the delegation of Poland proposed that the Spanish question be taken off the list of matters of which the Security Council was seized. Accordingly, at the 79th meeting on 4 November 1946, the representative of Poland submitted a draft resolution.²⁰

The representative of Australia, referring to the draft resolution which he had submitted at the 49th meeting to the effect that the retention of this item on the list did not limit the General Assembly's rights in the matter, declared that the action which the Council was now taking would not settle that question by implication or otherwise. He maintained that the crux of the matter was the exact meaning of the term used in Article 12 which could, in no sense, be interpreted by the action which was being proposed by the delegation of Poland.

The representative of the United States supported the draft resolution submitted by the representative of Poland. He observed that, since the Security Council was not in fact actively considering the Spanish question, a recommendation by the General Assembly would not interfere with the prerogatives of the Council under Article 12. He further stated that, while the list of matters of which the Council was seized should be considered as matters being dealt with by the Council within the meaning of Article 12 (1), it would be wise in the future if the Security Council would examine the list in order to determine whether any matters included could be made the subject of a recommendation by the General Assembly without interference with the Council's prerogatives under Article 12 (1).

The representative of France believed that the draft resolution submitted by the representative of Poland would eliminate any possible objections based on Article 12 which might have prevented the General Assembly from dealing with the Spanish question.

The representative of the USSR, citing the text of Article 12, observed that the representatives of Australia and the United States had touched on a question which was not directly connected with the subject under consideration.

The representative of Mexico observed:

"It seems to us that when the Security Council is not engaged in the study of a problem or in its solution, when it has not taken any interim measure such as charging the Secretariat with the task of gathering more information, but is merely leaving the matter on its agenda to show that it is keeping the said problem in mind or under its observation, then, in our opinion, it is not fitting to regard such procedure as constituting the continuous exercise of the Council's functions within the meaning of Article 12, because this would deprive the Assembly of the right to make recommendations on the problems involved, on the grounds that there must be no interference or conflict between the two organs when one is acting. In this case the Security Council is not taking any action."

The President (United Kingdom) stated that, in regard to the interpretation of Article 12, it might well be that there was a case for elucidation.

The representative of Egypt said that his delegation was particularly interested in the legal aspect of the problem. He considered that, since the Council was not dealing actively with the Spanish question, there was no reason why that question should not be removed from its agenda and brought before the Assembly.

The President suggested the addition of the following sentence to the draft resolution: "(The Security Council) requests the Secretary-General to notify the General Assembly of this decision."

Decision: *At the 79th meeting on 4 November 1946, the draft resolution submitted by the representative of Poland, with the addition suggested by the President, was adopted unanimously.*²¹

CASE 2 (i)

At the 202nd meeting on 15 September 1947, in connexion with the Greek frontier incidents question, the representative of the United States declared that, since the Greek question had been placed on the agenda of the General Assembly, the Security Council should assist the General Assembly in its efforts to bring about an improvement in the Balkan situation. The General Assembly, however, could not exert all the powers given

¹⁹ For texts of relevant statements see:

44th meeting: Chairman of the Sub-Committee (Australia), pp. 311-312, 326.

45th meeting: Australia, pp. 326-327; Egypt, pp. 330-331; USSR, pp. 337-338; United States, p. 328.

46th meeting: President (Mexico), pp. 360-364; Australia, pp. 349-357; France, pp. 357-360; United Kingdom, pp. 347-348.

47th meeting: Australia, pp. 376-377; Poland, p. 373.

48th meeting: President (Mexico), p. 398; Australia, p. 391; France, p. 396; Poland, pp. 389, 392, 398; USSR, p. 395; United Kingdom, p. 394; United States, p. 397.

49th meeting: Australia, pp. 442-443; USSR, pp. 444, 445, 446; United States, p. 446.

78th meeting: Poland, pp. 487-488.

79th meeting: President (United Kingdom), pp. 497, 498; Australia, pp. 493-494; Egypt, pp. 497-498; France, p. 495; Mexico, pp. 496-497; Poland, pp. 491-492; USSR, pp. 495-496; United States, pp. 494-495.

¹⁹ 49th meeting: p. 446.

²⁰ 79th meeting: p. 492.

it under the Charter in a situation of this nature so long as the Security Council was exercising its functions in respect of a given question, unless the Council made an appropriate request to the Assembly in accordance with Article 12 of the Charter. To this end, he submitted the following draft resolution:²²

"The Security Council, pursuant to Article 12 of the Charter,

"(a) Requests the General Assembly to consider the dispute between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other, and to make any recommendations with regard to that dispute which it deems appropriate under the circumstances;

"(b) Instructs the Secretary-General to place all records and documents in the case at the disposal of the General Assembly."

The representative of Australia, supporting the United States draft resolution, considered that the proposal was intended to remove a limitation upon the powers of the General Assembly which existed by reason of Article 12; while the Assembly would be enabled to make a recommendation if it so desired, the Security Council would still be seized of the dispute.

The President, speaking as the representative of the USSR, could not agree with the United States proposal, for in his opinion,

"... the removal of the Greek question from the Security Council's agenda would mean that the Security Council is voluntarily abstaining from taking a decision on a matter with which it, as the body entrusted with the primary task of maintaining international peace, should in fact deal ...

"... Such a decision would not help to enhance the authority of the General Assembly, and it would at the same time impair the authority of the Security Council."

The representative of Poland stated that the General Assembly had the right, in accordance with Article 10 of the Charter, to discuss the Greek question. In his opinion, however, the action proposed by the United States draft resolution went beyond that point, for it was a proposal for the Security Council to ask the General Assembly to solve a problem which the Council had been unable to solve itself. He understood fully that there might be situations wherein the Security Council might appeal to the General Assembly to make certain recommendations. He believed, however, that there was a difference between a request for a specific recommendation, as was the case in the Spanish question, in order to secure additional moral and political support for an action, and a request for any recommendation, as the United States draft resolution proposed, which would be universally interpreted as an abdication by the Security Council of its primary responsibilities under the Charter.

The representative of the United States observed:

"This resolution is designed simply, by having recourse to Article 12 of the Charter, to give the Assembly the faculty of making recommendations. That is all. It is not a question of removing this question from the agenda of the Council. The Council may discuss the matter concurrently, if it chooses."

²² 202nd meeting: p. 2369.

The representative of France believed that in accordance with Article 12 the Security Council could either delete the matter from its agenda or it could request the General Assembly to make recommendations and, in this case, continue to deal with the question in parallel with the General Assembly. He said that he was not impressed by the argument that the latter alternative might result in contradictory decisions from the Security Council and the General Assembly.

The representative of Syria considered that as long as the Security Council was seized of the question, the recommendations expected from the General Assembly would be only to the Security Council.

Decision: *At the 202nd meeting on 15 September 1947, the United States draft resolution was not adopted. There were 9 votes in favour and 2 against (1 vote against being that of a permanent member).*²³

CASE 2 (ii)

Following the rejection of the United States draft resolution, the representative of the United States submitted a new draft resolution²⁴ to remove the dispute from the list of matters of which the Council is seized. The President, speaking as the representative of the USSR, declared that, as he had already indicated, in connexion with the previous United States draft resolution, he could not agree to the removal of the Greek question from the agenda of the Council.

Decision: *At the 202nd meeting on 15 September 1947, the new United States draft resolution was adopted by 9 votes in favour and 2 against.*²⁵

At the 202nd meeting on 15 September 1947, the Security Council, having removed the Greek question from the list of matters of which it was seized, adopted the draft notification from the Secretary-General to the General Assembly, after the Council had amended the draft notification with regard to the removal of the Greek question.²⁶

CASE 3

At the 503rd meeting on 26 September 1950, in connexion with the complaint of armed invasion of Taiwan (Formosa), before the adoption of the agenda, the representative of Cuba stated that it might not be an appropriate moment for the Security Council to consider the complaint because that item was to be discussed by the General Assembly. He felt that, since the discussion of the question in the Assembly would shed light on the problem and facilitate its consideration by the Council, the Council should defer the consideration of the complaint.

The representative of China observed that the General Assembly at its 285th plenary meeting, held on 26 September 1950, had decided to include in its agenda an item, proposed by the delegation of the USSR, under the title "Complaint of aggression against China by the United States of America". In his opinion, the ex-

²³ 202nd meeting: p. 2399.

²⁴ 202nd meeting: p. 2401.

²⁵ S/555, O.R., 2nd year, No. 89; 202nd meeting, pp. 2404-2405. For text, see chapter VIII, p. 312.

²⁶ 202nd meeting: pp. 2405-2406. For texts of relevant statements see:

202nd meeting: President (USSR), pp. 2376-2377, 2402; Australia, pp. 2372-2373; France, pp. 2384-2385; Poland, pp. 2379-2380; Syria, p. 2387; United States, pp. 2368-2369, 2383, 2401.

planatory memorandum,²⁷ which the delegation of the USSR had submitted in support of the Assembly item, indicated that the item proposed for the Assembly also included the so-called invasion of Taiwan by the United States which was being discussed in the Security Council. The representative of China further stated:

"According to Articles 10 and 12 of the Charter, the Security Council and the General Assembly should not discuss the same problem simultaneously. There are very good and sound reasons for that provision in the Charter. If we do not observe the provisions of the Charter, the various organs of the United Nations will have conflicting decisions and recommendations. I therefore move that the Security Council cease consideration of its item during the consideration of this item by the General Assembly."

The representative of the USSR observed:

"As regards the reference to Article 12 of the Charter, the representative of the Kuomintang group is interpreting it incorrectly. If we read this Article carefully and study it we find that it means that, while the Security Council is exercising the functions assigned to it by the Charter in respect of any dispute or situation, the General Assembly may not make any recommendations—I repeat: may not make any recommendations—with regard to that dispute or situation unless the Security Council so requests. There is no suggestion here that the General Assembly may not consider or discuss such questions . . ."

"The same applies to Article 10 of the Charter, which also dealt with recommendations but not with consideration or discussion . . ."

The representative of the United States observed:

"The letter contained in document S/1808 which is signed by Mr. Chou En-lai and . . . the reference by the representative of the Soviet Union to this letter again serves to confirm what is already obvious: that the same items, although titled differently in both bodies, cover precisely the same subject."

". . . My delegation is willing to have the complaint aired and considered in the Security Council and in the General Assembly simultaneously, consecutively or in any other order which the members of both bodies desire . . ."

The representative of the United States, referring to the statement made by the representative of the USSR, that the General Assembly under the Charter might discuss the matter while the Security Council had the matter under consideration, enquired if the representative of the USSR considered that the General Assembly should discuss the complaint without making any recommendations on this matter. He wished to know this in order to be able to take a position with respect to the motion which had been made by the delegation of China.

At the 504th meeting on 27 September 1950, the representative of the USSR observed:

"Discussion of this question by the Security Council in no way prevents the General Assembly from discussing the question of United States aggression against China . . . It is the Council's duty and obligation under the Charter to carry out its functions; what the General Assembly does is the General Assembly's concern."

"References to Articles 10 and 12 of the Charter, in order to justify the proposal to remove this question from the Security Council's agenda, are worthless. Neither of these Articles contains any provisions forbidding the simultaneous discussion of one and the same question in the Security Council and the General Assembly. There are a number of precedents in the work of both the Security Council and the General Assembly which show that the same questions have been discussed in both these organs simultaneously . . ."

The representative of Ecuador believed that there was no need for the Security Council to discuss the charge of aggression against Formosa while it was being discussed in the General Assembly. On the other hand, he could not agree that the matter should be withdrawn from the agenda of the Council. He submitted an amendment to the motion made by the representative of China, providing that the Security Council "defer consideration of this question until the first meeting of the Council held after 1 December 1950".

The President, speaking as the representative of the United Kingdom, stated:

". . . The Security Council is obliged under the Charter to deal with threats to the peace, and it would in our opinion be failing in its duty if it either decided not to deal with this one or to defer consideration of it for a long period. The mere fact that the question, or a very similar one, has been placed on the agenda of the General Assembly does not in our view affect the duty of the Security Council at all. In the first place, the General Assembly, as is well known, can only make recommendations on such matters and cannot take decisions. In the second place, the Security Council has, under the Charter, primary responsibility for the maintenance of international peace and security."

The representative of Egypt pointed out that this was not the first time that the General Assembly had considered a matter which had remained on the agenda of the Security Council. He recognized the wide competence of the General Assembly under Article 10 of the Charter, but did not consider that the Council should therefore relinquish its responsibilities. He suggested that paragraph (a) of the Ecuadorean amendment, which proposed the deferment of the consideration of the question, might be reconsidered so that a better approach might be found to serve the purpose of the Council in the discharge of its duties.

Decision: *At the 505th meeting on 28 September 1950, the Council rejected the proposal submitted by the representative of China that the Council should cease the consideration of the complaint of armed invasion of Taiwan (Formosa) during the consideration of this item by the General Assembly. There were 2 votes in favour, 6 against, with 3 abstentions.*²⁸

Decision: *At the 505th meeting on 28 September 1950, the Council rejected the operative part of the draft resolution submitted by the representative of Ecuador. There were 6 votes in favour, 4 against, with 1 abstention.*²⁹

²⁸ 505th meeting: pp. 20-21.

²⁹ 505th meeting: pp. 22-23.

At the 506th meeting on 29 September 1950, the representative of Ecuador reintroduced his proposal as a new draft resolution³⁰ substituting the date "15 November 1950" for "1 December 1950" in the operative part.

Decision: *At the 506th meeting on 29 September 1950, the draft resolution submitted by the representative of Ecuador, as amended, was adopted. There were 7 votes in favour, 3 against, with 1 abstention.*³¹

CASE 4

By letter dated 29 January 1951,³² in connexion with the complaint of aggression upon the Republic of Korea, the representative of the United Kingdom pointed out that the item in the General Assembly's agenda, entitled "Intervention of the Central People's Government of the People's Republic of China in Korea", had figured in the discussions of the Security Council under the broader heading of "Complaint of aggression upon the Republic of Korea". Referring to the provisions of Article 12 (1), the United Kingdom delegation considered it desirable to remove any technical doubts that might be cast on the validity of any resolution adopted by the Assembly which contained recommendations to Members. The United Kingdom delegation proposed that a meeting of the Security Council should be held with the object of removing from the Council's agenda the item "Complaint of aggression upon the Republic of Korea".

At the 531st meeting on 31 January 1951, the representative of the United Kingdom pointed out:

"... the Chinese intervention in Korea was discussed by us at a number of meetings during November, and a draft resolution submitted jointly by six members of the Council was finally put to the vote on 30 November 1950 (530th meeting). Although the resolution received nine affirmative votes, it was not adopted owing to the negative vote of the Soviet Union. It might therefore be argued that since that date the Council has not, in effect, been exercising its functions in respect of this question within the meaning of Article 12 of the Charter. Nevertheless, the discussion which has since taken place in the General Assembly has ranged over a considerable field, and my own delegation, at any rate, feels that if the General Assembly were to adopt a resolution containing recommendations to Members and dealing with the question of Chinese intervention, or with the broader question of the complaint of aggression against the Republic of Korea, both questions having now become indistinguishable in practice, objections might then be raised that this would be an infringement of Article 12 of the Charter."

He submitted a draft resolution³³ to the effect that the Security Council remove the item "Complaint of aggression against the Republic of Korea" from the list of matters of which the Council was seized.

The representative of China felt that, although the Security Council had not exercised since November

1950 the functions assigned to it under Article 12 of the Charter with respect to this item, the removal of the item from the agenda was unnecessary and that it should not be cited as a precedent binding the Council on all future occasions.

Decision: *At the 531st meeting on 31 January 1951, the United Kingdom draft resolution was adopted unanimously.*³⁴ *On 5 February 1951, the Secretary-General informed the General Assembly of the removal of the item from the list of matters of which the Security Council was seized.*³⁵

B. PRACTICES AND PROCEEDINGS IN RELATION TO THE CONVOCATION OF A SPECIAL SESSION OF THE GENERAL ASSEMBLY

"Article 20 of the Charter

"The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations."

CASE 5

At the 275th meeting on 30 March 1948, in connexion with the Palestine question, the representative of the United States submitted a draft resolution³⁶ to request the Secretary-General, "in accordance with Article 20 . . . to convoke a special session of the General Assembly to consider further the question of the future Government of Palestine." In the course of the discussion at the 277th meeting on 1 April 1948, the representative of Belgium expressed the following opinion:³⁷

"... the convoking of the General Assembly would not prevent the Council from considering, in the meantime, any substantive proposals which it might be in a position to submit to the General Assembly."

Decision: *At the 277th meeting on 1 April 1948, the United States draft resolution was adopted by 9 votes in favour and 2 abstentions.*³⁸

C. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLES OF THE CHARTER INVOLVING RECOMMENDATIONS BY THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY³⁹

1. Appointment of the Secretary-General

"Article 97 of the Charter

"The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization."

³⁴ 531st meeting: pp. 12-13. For texts of relevant statements see:

³⁵ 531st meeting: China, p. 11; United Kingdom, pp. 7-8.

³⁶ S/2001.

³⁷ S/705, 275th meeting: pp. 247-248. For the proceedings of the Security Council from the reception by the Council of General Assembly resolution 181 (II) of 29 November 1947 to the decision of the Security Council to request the convocation of a special session, reference should be made to chapter XII, Case 21.

³⁸ 277th meeting: p. 5.

³⁹ 277th meeting: p. 35. On the same day the Secretary-General summoned a special session to meet on 16 April 1948 (A/530).

⁴⁰ For cases concerning Article 4 (2), see chapter VII.

³⁰ S/1823/Corr.1, 506th meeting: pp. 3-5.

³¹ 506th meeting: pp. 3-5. For text of decision, see chapter VIII, p. 359. For texts of relevant statements see: 503rd meeting: China, p. 29; Cuba, pp. 18-19; USSR, pp. 30-31; United States, pp. 32-33.

504th meeting: President (United Kingdom), p. 18; Ecuador, pp. 11, 13; Egypt, pp. 20-21; USSR, pp. 5-6.

³² S/1922.

³³ S/1995, 531st meeting: p. 8.

[*Note:* In accordance with rule 48 of the provisional rules of procedure, all meetings of the Security Council at which recommendations concerning the appointment of the Secretary-General have been considered have been held in private. The Council has voted by secret ballot in such manner as to ascertain whether any permanent member had cast a negative vote.⁴⁰ After each private meeting, communiqués have been issued by the Security Council, in accordance with rule 55 of the provisional rules of procedure. These communiqués, containing information as to the stage reached in the consideration of the recommendations, have been circulated in place of verbatim records.]

CASE 6

At the 4th meeting on 29 January 1946, the Security Council resolved to recommend the appointment of Mr. Trygve Lie as Secretary-General.⁴¹ The President (Australia) communicated with Mr. Lie "in order to ascertain whether he would be prepared to accept this nomination"⁴² and, by letter dated 31 January 1946, informed the President of the General Assembly of the recommendation.⁴³

CASE 7

In view of the expiration on 1 February 1951 of the five-year term for which Mr. Trygve Lie had been appointed by the General Assembly in 1946, and in accordance with Article 97 of the Charter, the Security Council considered the question of making a recommendation to the General Assembly regarding the appointment of the Secretary-General at the 509th, 510th, 512th, 513th and 515th meetings between 9 and 25 October 1950.⁴⁴

By letters dated 12 October⁴⁵ and 25 October⁴⁶ 1950, the President (United States) informed the President of the General Assembly that the Council had been unable to agree upon a recommendation.

At the 513th meeting on 20 and 21 October 1950, the Council requested the five permanent members to hold private consultations and to report to it not later than 24 October 1950.⁴⁷

By letter dated 30 October 1950, the President (United States) informed the President of the General Assembly⁴⁸ that, at the 516th meeting on 30 October 1950, the Council had not agreed upon a USSR proposal to request the Assembly to postpone consideration of the item on its agenda relating to the appointment of a Secretary-General.⁴⁹

2. Conditions of accession to the Statute of the International Court of Justice

"Article 93 (2) of the Charter

"A state which is not a Member of the United Nations may become a party to the Statute of the

International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council."

CASE 8

On 26 October 1946, the Swiss consul-general transmitted to the Secretary-General a letter from the Chief of the Swiss Federal Political Department of the Swiss Government requesting that the Security Council and the General Assembly be informed of the desire of the Swiss Federal Council to know the conditions on which Switzerland could become a Party to the Statute of the Court under Article 93 (2) of the Charter.⁵⁰

At the 78th meeting on 30 October 1946, the Council referred the matter to the Committee of Experts for consideration and report.⁵¹

In its report, the Committee of Experts advised the Council to send the following recommendation to the General Assembly:⁵²

"The Security Council recommends that the General Assembly, in accordance with Article 93, paragraph 2, of the Charter, determine the conditions on which Switzerland may become a Party to the Statute of the International Court of Justice, as follows:

"Switzerland will become a Party to the Statute on the date of the deposit with the Secretary-General of the United Nations of an instrument, signed on behalf of the Government of Switzerland and ratified as may be required by Swiss constitutional law, containing:

"(a) Acceptance of the provisions of the Statute of the International Court of Justice;

"(b) Acceptance of all the obligations of a Member of the United Nations under Article 94 of the Charter; and

"(c) an undertaking to contribute to the expenses of the Court such equitable amount as the General Assembly shall assess from time to time, after consultation with the Swiss Government."

The Committee attached certain observations to the recommendation:

". . . In the opinion of the Committee, acceptance of the provisions of the Statute includes acceptance of any incidental jurisdiction exercisable by the Court under the provisions of the Statute . . .

". . . The obligations imposed by Article 94 upon a Member of the United Nations should, in the opinion of the Committee, apply equally to non-members of the United Nations which become Parties to the Statute and to non-parties which are allowed access to the Court. In the opinion of the Committee, the obligations of a Member of the United Nations under Article 94 include the complementary obligations arising under Articles 25 and 103 of the Charter in so far as the provisions of those Articles may relate to the provisions of Article 94, and non-members of the United Nations which become parties to the Statute (and non-parties which have access to the Court) become bound by these complementary obligations under Articles 25 and 103 in relation to the

⁴⁰ General Assembly resolution 11 (I) of 24 January 1946 provided that "a vote in either the Security Council or the General Assembly, if taken, should be by secret ballot".

⁴¹ 4th meeting: p. 44.

⁴² 4th meeting: p. 44.

⁴³ O.R., 1st year, 1st series, Suppl. No. 1, p. 80.

⁴⁴ 509th meeting: p. 1; 510th meeting: p. 1; 512th meeting: p. 1; 513th meeting: p. 1; 515th meeting: p. 1.

⁴⁵ S/1844.

⁴⁶ S/1866.

⁴⁷ 513th meeting: p. 1.

⁴⁸ S/1875.

⁴⁹ 516th meeting: pp. 485-486.

⁵⁰ S/185, O.R., 1st year, 2nd series, Suppl. No. 7, annex 12.

⁵¹ 78th meeting: pp. 486-487.

⁵² S/191, O.R., 1st year, 2nd series, Suppl. No. 8, annex 13. By resolution 91 (I) of 11 December 1946, the General Assembly adopted the recommendation of the Council.

provisions of Article 94 (but not otherwise), when they accept 'all the obligations of a Member of the United Nations under Article 94'."

The Committee observed that the conditions recommended above as appropriate in the case of Switzerland were not intended to constitute a precedent in any future case under Article 93 (2) of the Charter, by which conditions are to be determined in each case by the General Assembly upon the recommendation of the Security Council. The Committee advised that the Council should recommend generally applicable conditions under Articles 4 and 69 of the Statute after Switzerland or some other non-Member State had acceded to the Statute.

The report of the Committee was placed before the Security Council for consideration at its 80th meeting on 15 November 1946.

Decision: *In the absence of observations, the President declared the report adopted.*⁵³

CASE 9

On 24 March 1949, the Swiss Office for Liaison with the United Nations transmitted to the Secretary-General a letter dated 8 March 1949 from the Head of the Government of the Principality of Liechtenstein expressing his desire to learn the conditions under which Liechtenstein might become a party to the Statute of the International Court of Justice.⁵⁴

At the 423rd meeting on 8 April 1949, the Security Council referred the matter to the Committee of Experts.⁵⁵

In its report,⁵⁶ the Committee of Experts advised the Council to send a recommendation to the General Assembly to apply in the case of Liechtenstein the same conditions as in the case of Switzerland.⁵⁷

At the 432nd meeting on 27 July 1949, the Council considered the report of the Committee of Experts. The representatives of the Ukrainian SSR and the USSR indicated certain considerations in view of which Liechtenstein could not be considered a sovereign State as required by Article 93 (2) and, consequently, could not be admitted as a Party to the Statute of the International Court. The representative of Egypt contended that Liechtenstein was a State in the sense of international law and was entitled to become a Party to the Statute.⁵⁸

Decision: *The Council decided, by 9 votes in favour, with 2 abstentions, to adopt the recommendation of the Committee of Experts.*⁵⁹

3. Conditions under which a non-Member State, Party to the Statute, may participate in electing members of the International Court of Justice

"Article 4 (3) of the Statute of the International Court of Justice

"The conditions under which a state which is a party to the present Statute but is not a Member of

⁵³ 80th meeting: p. 502.

⁵⁴ S/1298 and Corr.1, O.R., 4th year, Suppl. for April 1949, p. 6.

⁵⁵ 423rd meeting: pp. 16-17.

⁵⁶ S/1342, O.R., 4th year, Suppl. for July 1949, pp. 2-3.

⁵⁷ See Case 8.

⁵⁸ For texts of relevant statements see:

432nd meeting: Egypt, p. 4; Ukrainian SSR, p. 3; USSR, pp. 5-6.

⁵⁹ 432nd meeting: pp. 2, 6.

the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council."

CASE 10

By letter dated 2 August 1948, the Acting Secretary-General informed the President of the Security Council that on 28 July 1948 Switzerland had become a Party to the Statute of the International Court of Justice in accordance with Article 93 (2) of the Charter and General Assembly resolution 91 (I) of 11 December 1946. He also drew the attention of the President to a recommendation made earlier by the Committee of Experts to the effect that, when Switzerland became a Party to the Statute, it might, under Articles 4 and 69 of the Statute, participate in electing members of the Court and in making amendments to the Statute, under conditions which the Assembly might prescribe upon the recommendation of the Security Council.⁶⁰

By letter dated 12 August 1948, the representative of Belgium requested that the question be included in the provisional agenda to enable the Council to make the necessary recommendation to the General Assembly under Article 4 (3) of the Statute. He observed that circumstances did not necessitate an examination of the recommendations mentioned in Article 69 of the Statute. By the same communication the representative of Belgium submitted a draft resolution.⁶¹

Decision: *At the 360th meeting on 28 September 1948, the Council unanimously adopted the draft resolution submitted by the representative of Belgium in his communication of 12 August.*⁶²

Having recited in the preamble that Switzerland had become a Party to the Statute and had "even, under Article 36 of the Statute, accepted the compulsory jurisdiction of the Court", the recommendation read as follows:

"The Security Council

"Recommends to the General Assembly to determine as follows the conditions under which a State, a Party to the Statute of the Court but not a Member of the United Nations, may participate in electing the members of the International Court of Justice:

"1. Such a State shall be on an equal footing with the Members of the United Nations in respect to those provisions of the Statute which regulate the nominations of candidates for election by the General Assembly;

"2. Such a State shall participate, in the General Assembly, in electing the members of the Court in the same manner as the Members of the United Nations;

"3. Such a State, when in arrears in the payment of its contribution to the expenses of the Court, shall not participate in electing the members of the Court in the General Assembly, if the amount of its arrears equals or exceeds the amount of the contribution due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a State to

⁶⁰ S/947, O.R., 3rd year, Suppl. for Sept. 1948, pp. 1-2.

⁶¹ S/959, O.R., 3rd year, Suppl. for Sept. 1948, pp. 3-4.

⁶² 360th meeting: p. 30. By resolution 264 (III) of 8 October 1948, the General Assembly adopted the recommendation without change.

participate in the elections, if it is satisfied that the failure to pay is due to conditions beyond the control of that State (Cf. Charter, Article 19)."

D. PRACTICES AND PROCEEDINGS IN RELATION TO THE ELECTION OF MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

"Article 4

"1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration . . ."

"Article 8

"The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court."

"Article 10

"1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

"2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

"3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected."

"Article 11

"If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place."

"Article 12

"1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

"2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

"3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

"4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote."

PROVISIONAL RULES OF PROCEDURE

Rule 61

Relations with other United Nations Organs

"Any meeting of the Security Council held in pursuance of the Statute of the International Court of Justice for the purpose of the election of members of the Court shall continue until as many candidates as are required for all the seats to be filled have obtained in one or more ballots an absolute majority of votes."

[*Note:* Following procedural difficulties which arose in connexion with Articles 11 and 12 during the first election of judges,⁶³ the Council, at its 138th meeting on 4 June 1947, adopted rule 61 of the provisional rules of procedure.

The new rule, which had been transmitted to the Council for its consideration, was first adopted by the Assembly "provisionally and subject to the concurrence of the Security Council".⁶⁴ The representative of the United States submitted a draft resolution in the Council to concur in the rule of procedure adopted by the Assembly, and to adopt a rule for the Council differing from the Assembly rule in the designation of the organ only. The United States draft resolution containing the new rule of procedure was adopted unanimously and transmitted to the General Assembly for its information in accordance with a provision of the resolution.⁶⁵

The documents distributed in connexion with the elections were the same for the Council and the Assembly. For the elections in 1948 and 1951 the documents were distributed under joint symbols.⁶⁶

At the 369th meeting on 22 October 1948, the President (United States) reminded members of the provision in the Statute to the effect⁶⁷

"... that in balloting on candidates for the Court, no distinction shall be made between the ballot of permanent members and that of non-permanent members of the Council".]

CASE 11

At the 9th meeting on 6 February 1946, 15 candidates who received an absolute majority of votes were declared "duly elected by the Security Council".⁶⁸ Upon the suggestion of the President of the Assembly, the Council suspended its proceedings until 3 p.m. of the same day.⁶⁹ When the Council reconvened, the Presi-

⁶³ See Case 11.

⁶⁴ S/260; the Report of the 6th Committee of the General Assembly (A/191) which was forwarded to the Council together with the new rule of procedure recalled that "during the election of members of the International Court of Justice . . . differences led to a suggestion that the Court itself should be asked to give an advisory opinion as to the requirements of Articles 11 and 12", but the Committee did not recommend that "any action should be taken to request an advisory opinion on this matter".

⁶⁵ 138th meeting: pp. 949-952.

⁶⁶ For the 9th meeting, A/25 was reprinted in *O.R., 1st year, 1st series, Suppl. No. 1*, pp. 80-82; for the 369th meeting, A/623, S/991, S/991/Add.1, A/623/Add.1, S/991/Add.1/Corr.1, A/623/Add.1/Corr.1, S/991/Add.2, A/623/Add.2, S/991/Rev.1, A/623/Rev.1, S/991/Rev.2, A/623/Rev.2, S/991/Rev.2/Corr.1, A/623/Rev.2/Corr.1, S/991/Rev.2/Corr.2, A/623/Rev.2/Corr.2; for the 567th meeting, S/2339, A/1879, S/2352, A/1885.

⁶⁷ 369th meeting: p. 2.

⁶⁸ 9th meeting: pp. 136-137.

⁶⁹ 9th meeting: p. 137.

dent (Australia) announced that, according to the communications received from the President of the Assembly, thirteen candidates had obtained the necessary absolute majority in both organs. The second ballot in the Council to elect the other two judges resulted in an absolute majority for one candidate only.⁷⁰

The President's subsequent announcement that the President of the Assembly had requested the results of each ballot gave rise to extensive consideration of the requirements of Articles 11 and 12 of the Statute, with special reference to the interpretation of the word "meeting" as used in Articles 11 and 12 in connexion with the joint conference provided for in the event of a deadlock. The discussion culminated in the adoption of rule 61 of the provisional rules of procedure at the 138th meeting on 4 June 1947.

The representative of Brazil was of the opinion that the President of the Assembly had the right to have the result "at the end of each meeting, but not the result of each ballot". The representatives of the USSR and the United States suggested that the Council inform the President of the Assembly of the results of the second ballot, and then proceed immediately to choose the last candidate. The representative of the United Kingdom observed that, under Articles 11 and 12 of the Statute, the Council had to make "three attempts to hold an election by common accord of this Council and the Assembly". He later added:

"In these three attempts, each of the constituent bodies must endeavour to select a complete list to fill all the vacant seats. We must, therefore, now complete a full list for the empty seats before we are informed of the selections which the Assembly has made . . . and the Assembly must also select its complete list. When both those processes have been completed, that will be one of the three attempts laid down in the Statute."

The President in reply commenced to refer to a communication from the President of the Assembly, but was interrupted on a point of order by the representative of the United Kingdom to the effect that the Council ought not to receive a communication from the Assembly until it has finished the elections. Although the President did not continue his statement, he advised the Council that, inasmuch as the Assembly had adjourned until 5 p.m., it could not in any event act on his communication. He suggested that the Council proceed to vote again for the one remaining name. After consideration of the question as to whether balloting in the Council and the Assembly had to proceed concurrently, another secret ballot was taken.⁷¹

Before declaring the results of the ballot, the President indicated that he wished it to be understood that, according to the legal experts of the Secretariat, the Council had taken its third ballot. The representative of the United Kingdom understood that advice to mean that, if all fifteen judges were not chosen as a result of the third ballot, the Council would proceed to a joint conference under Article 12 to choose the remainder of the Court. Referring to the provisions of Articles 11 and 12, he expressed the opinion that recourse should be had to the joint conference after three meetings and not after three ballots. The representatives of Mexico, the Netherlands and the USSR were of the opinion that the ballots were concurrent with the meetings.

There being no objection, the President invited the President of the Assembly, who was present in the Council chamber, to inform the Council "regarding the procedure that has been followed in the Assembly on this particular matter".

The President of the Assembly was of the opinion that the words "a meeting held for the purpose of the election (*séance d'élection*) . . . must be interpreted as meaning a ballot". As regards the convening of the joint conference, he stated:

". . . Article 12 does not constitute an obligation. If the Assembly and the Security Council do not wish to apply it, they may continue to proceed with ballots till the result is achieved. It (Article 12) . . . is a measure of conciliation, a means of seeking a solution. Three members of the Security Council and three members of the Assembly work together and nominate a candidate for submission to the Assembly and the Security Council. These bodies must still proceed, with regard to this candidate, by the same methods and the same majority. Article 12 merely constitutes an intermediary measure to enable the two organs to find a candidate. But the last word rests with the Assembly and the Security Council."

The President of the Assembly added that, in his view, since the candidate elected on the Council's second ballot had failed to receive an absolute majority in the Assembly, the Council had to vote for two candidates, although the candidate elected on the second ballot by the Council could be voted upon again. The representative of China observed that it was not necessary for the Assembly and the Council to adopt the same procedure inasmuch as the Statute (Article 8) enjoins the two organs to proceed independently. His interpretation of Articles 11 and 12 was that "what is really meant is three comparisons of the results of the Council, on the one hand, and the results, in the Assembly, on the other".

The representative of the United Kingdom disagreed with the contention of the President of the Assembly that the Council had to fill two places. As regards the other points, he suggested the following compromise:⁷²

". . . we should, for this meeting only and on the very clear understanding that no precedent is created, accept the procedure advocated by the President of the Assembly and count this next vote as the third round; but, before the Assembly and the Council have to deal with the matter again, we should ask the International Court of Justice, which will be constituted and in action, to give us an advisory opinion upon the meaning of these clauses, so that next time this question will not arise."

After further discussion, the President asked:

"May I take it that the members of the Council accept this third ballot (to be regarded as without precedent) as equivalent to the third ballot and a third meeting, in conjunction with the first result?"

There being no objection, the President declared the suggestion adopted. The President thereupon declared the results of the ballot taken earlier in the meeting. One candidate received an absolute majority.⁷³

⁷⁰9th meeting: p. 139.

⁷¹9th meeting: p. 145.

⁷²9th meeting: p. 156. For consideration of the request for an advisory opinion, see Case 26.

⁷³9th meeting: pp. 159-160.

At the suggestion of the President of the Assembly, the Council suspended its meeting to await the results of the third ballot in the Assembly. Since the Assembly had to elect two candidates on the third ballot, and only one received an absolute majority, the Assembly informed the Council of its intention to proceed to a fourth ballot.⁷⁴ The representative of the United Kingdom agreed that the Council and Assembly were "perfectly competent" to proceed to a fourth ballot without a conference, but he was of the opinion that, if the fourth ballot did not end the election, a joint conference would be necessary. Before voting, the President announced the name of the candidate elected by the Assembly. The representative of Brazil stated that it was wrong to vote for a judge with the knowledge of the results of the vote in the Assembly. He declared that the case was "absolutely without precedent". The President replied:⁷⁵

"I give my assurance to the Council that this vote, as one previous vote, is not to be regarded as a precedent, but is a matter on which there will be appeal to the International Court of Justice, with a view to clarifying the position relating to these matters before the next election may be required."

The fourth ballot resulted in the election of the fifteenth judge.⁷⁶

CASE 12

At the 369th meeting on 22 October 1948, the Security Council proceeded to elect five members of the Court. This was the first ballot held under rule 61 of the provisional rules of procedure.

Six ballots were taken before five members were elected.⁷⁷ The President (United States) announced "informally" the results of the Assembly's ballot, which indicated that only three members had received an absolute majority. The Council adjourned on the understanding that it would reconvene if the Assembly did not concur in its elections.

The 371st meeting convened on the same date to fill one vacancy which remained. The Council elected on the second ballot a fifth member who also received the absolute majority of votes in the Assembly.⁷⁸

CASE 13

At the 548th meeting on 29 May 1951, the Security Council noted with regret the death of Judge Barros Azevedo and decided, under Article 14 of the Statute, that the election to fill the vacancy for the remainder of the term of the deceased should take place during the sixth session of the General Assembly prior to the regular elections to be held at the same session.⁷⁹ At the 567th meeting on 6 December 1951, the Council elected one candidate to fill the vacancy; the same candidate also received an absolute majority in the Assembly.⁸⁰

⁷⁴ 9th meeting: p. 161.

⁷⁵ For texts of relevant statements see:

9th meeting: President (Australia), pp. 134-135, 137-138, 140, 141, 143, 145, 147, 159, 160, 163, 164; Brazil, pp. 140, 144, 164; China, pp. 152-153; Egypt, pp. 141, 142, 144, 145, 147-148, 156-157; France, pp. 149-150; Mexico, p. 149; Netherlands, pp. 148-149; USSR, pp. 146-147, 158-159; United Kingdom, pp. 141-142, 142, 144, 146, 154-156; United States, pp. 140, 157; President of the General Assembly (Mr. Spaak), pp. 150-151, 151-152.

⁷⁶ 9th meeting: p. 165.

⁷⁷ 369th meeting: pp. 1-4.

⁷⁸ 371st meeting: pp. 16-18. The candidate elected was not the same candidate as had been chosen by the Council on the previous ballot.

⁷⁹ S/2153, 548th meeting: p. 2.

⁸⁰ 567th meeting: p. 3.

CASE 14

At the 567th meeting on 6 December 1951, the Security Council proceeded to fill five regular vacancies. Before the balloting commenced, the President (Ecuador) stated:

"If more than five candidates obtain an absolute majority, the President will decide upon the procedure to be followed."

Six candidates obtained an absolute majority, three received seven votes and three received more than seven. Referring to the courses open to the Council, the President stated:

"It may happen that not all the six candidates will obtain a majority in the General Assembly, and that only five will have a majority. In that case one of the possible solutions would be for the Security Council simply to communicate to the General Assembly the names of the six candidates who have obtained the largest number of votes . . .

"Another solution would be for the Security Council to elect only two candidates by taking another vote to elect the two remaining candidates from all the names on the list, with the exception of those already elected at the first voting . . .

"Lastly, another solution would be for the Council to repeat the voting entirely with a view to succeeding in electing only five candidates."

After consulting with the members of the Council, the President ruled:

" . . . in view of Articles 8 and 13 of the Statute of the International Court of Justice, since the Security Council is responsible for electing five judges of the Court, it would appear incompatible with the Statute that the Security Council should submit to the General Assembly the names of six candidates which it has chosen."

The President's ruling was not challenged.

The representative of India proposed "that the Security Council awaits the receipt of the result of the ballot in the General Assembly before it takes a vote again on the matter".⁸¹ The President was of the opinion that, in view of the legal position, the Council should not wait for the Assembly's decision. The Indian proposal was rejected.⁸² The representative of the Netherlands suggested that the names of the six candidates which received an absolute majority should be put to the vote again. The representative of the USSR was of the opinion that the three candidates who received more votes than the others had already been elected. All that remained, in his view, was to vote again on the three candidates who received seven votes. Observing that one could not be dogmatic on this point, the representative of the United States stated:

"The question is whether there is a majority or no majority, and the size of the majority, at first sight at least, does not seem to be relevant; it certainly does not seem to be decisive."

He proposed "that the Council proceed now to take a ballot on all candidates".⁸³ Before asking for a vote on his proposal, however, he inquired "whether it is possible for the Council to be informed with regard to the

⁸¹ 567th meeting: p. 9.

⁸² 567th meeting: p. 10.

⁸³ 567th meeting: p. 15.

state of this matter in the General Assembly". The President replied:

"Yes; it is possible to say now that the Council will be informed about the results of the elections in the General Assembly after the Council makes its own decision on the matter."

An Indian motion to suspend the meeting for fifteen minutes for the purpose of consultation was rejected.⁸⁴ The United States proposal was then put to the vote and adopted by 9 votes in favour, 1 against and 1 abstention.⁸⁵

After new ballots were distributed the Council voted again to elect five members from the original list of candidates. Five candidates received an absolute majority. The President declared:

"As the same candidates have been elected both by the Security Council and the General Assembly, I am sure that the President of the Assembly will declare that the five gentlemen chosen by both these organs are elected members of the International Court."

The representative of Yugoslavia asked why the President of the Security Council might not make the announcement. The President replied:⁸⁶

"I should be greatly distressed if members of the Council were to think that I was surrendering the prerogatives of the Security Council but I understand that, at the 1948 election, the President of the General Assembly was the one to announce the election of the candidates. My object was to keep strictly to precedent."

The meeting was then adjourned.

E. RELATIONS WITH SUBSIDIARY ORGANS ESTABLISHED BY THE GENERAL ASSEMBLY

[*Note:* In addition to subsidiary organs established by the Security Council itself,⁸⁷ certain subsidiary organs established by the General Assembly have played a part in the proceedings of the Security Council, either when they have been placed in a special relation to the Council by resolution of the General Assembly, or when the Council found it necessary to make use of the services of a subsidiary organ already established by the Assembly without such provision being made. Section E lists these occasions in chronological order, giving a brief indication of the relation thus established and of subsequent developments.]

CASE 15

On 24 January 1946, the General Assembly, when establishing the Atomic Energy Commission,⁸⁸ instructed the Commission to submit its reports and recommendations to the Security Council. The Council was to issue directions to the Commission in matters affecting security, and on these matters the Commission was to be accountable for its work to the Council. The Commission was further directed to submit its rules of

procedure to the Council for approval and was, in general, instructed not to infringe upon the responsibilities of any organ of the United Nations, but to present recommendations for consideration.

At the 50th meeting on 10 July 1946, the Security Council approved the rules of procedure of the Atomic Energy Commission.⁸⁹

CASE 16

On 29 November 1947, the General Assembly, when establishing the United Nations Palestine Commission, provided that "the Commission shall render periodic monthly progress reports, or more frequently if desirable, to the Security Council" and that "the Commission shall make its final report to the next regular session of the General Assembly and to the Security Council simultaneously".⁹⁰ The resolution also provided that "the Commission shall be guided in its activities by the recommendations of the General Assembly and by such instructions as the Security Council may consider necessary to issue," and that "the measures taken by the Commission, within the recommendations of the General Assembly, shall become immediately effective unless the Commission has previously received contrary instructions from the Security Council".⁹¹

At the 263rd meeting on 5 March 1948, the Security Council adopted a resolution calling on "the permanent members of the Council to consult and to inform the Security Council regarding the situation with respect to Palestine and to make, as a result of such consultations, recommendations to it regarding the guidance and instructions which the Council might usefully give to the Palestine Commission with a view to implementing the resolution of the General Assembly".⁹² At the 271st meeting on 19 March 1948, the representative of the United States submitted three conclusions regarding the problem of Palestine, one of which read:

"Pending the meeting of the proposed special session of the General Assembly, we believe that the Security Council should instruct the Palestine Commission to suspend its efforts to implement the proposed partition plan."⁹³

This proposition, however, was not made into a formal proposal.

At the 277th meeting on 1 April 1948, after a resolution to request the convocation of a special session of the General Assembly had been adopted by the Security Council, the President asked what instructions were to be given to the Palestine Commission. The representative of the USSR stated that the Council "can direct the Palestine Commission, but only with a view to implementing the General Assembly's decision on Palestine. It cannot and may not give any other instructions which would be contrary to, or not in accordance with, that decision." The representative of France stated that the question referred to by the President raised "a difficulty, namely, the problem of whether the Security Council is authorized to ask the Commission established by the

⁸⁴ 567th meeting: p. 16.

⁸⁵ 567th meeting: pp. 16-17.

⁸⁶ For texts of relevant statements see:

567th meeting: President (Ecuador), pp. 3, 4, 5, 7, 8, 9, 10, 15, 16, 17; India, pp. 8-9, 16; Netherlands, pp. 9-10, 11-12; Turkey, p. 12; USSR, pp. 5-6, 6-7, 11, 13; United States, pp. 12-13, 15; Yugoslavia, pp. 7-8, 17.

⁸⁷ See chapter V, Subsidiary Organs of the Security Council.

⁸⁸ General Assembly Resolutions 1946:1(I).

⁸⁹ For consideration of reports of the Atomic Energy Commission, see chapter IX, pp. 367-368.

⁹⁰ On the relations of the Palestine Commission and the Security Council, see also Memorandum of 9 February 1948 prepared by the Secretariat. *O.R.*, 3rd year, *Suppl. for Jan., Feb. and March 1948*, pp. 14-24.

⁹¹ General Assembly resolution 181 (II). See chapter XII, Case 21, for proceedings of the Council on the resolution.

⁹² 263rd meeting: pp. 43-44.

⁹³ 271st meeting: p. 167.

General Assembly to cease its work", and suggested that the Commission "should be permitted to draw its own conclusions" from the decisions adopted by the Security Council. The President concluded that "it seems perfectly clear that the resolution which the Security Council has just adopted should offer a clear indication to the Palestine Commission as to how it should proceed . . . the Palestine Commission cannot fail to take due notice of the manner in which events are moving under the direction of the Security Council".⁹⁴

CASE 17

On 14 May 1948, the office of United Nations Mediator for Palestine was created by the General Assembly⁹⁵ to function under instructions from both the General Assembly and the Security Council. The resolution instructed the United Nations Mediator "to render progress reports monthly, or more frequently as he deems necessary, to the Security Council and to the Secretary-General for transmission to the Members of the United Nations". The Security Council issued a number of instructions to the Mediator and the Acting Mediator which, conferring new functions upon them, also had the effect of widening their functions under General Assembly resolution. These instructions were concerned with the supervision of the two truces of the Security Council, the problem of refugees, the demilitarization of Jerusalem, the protection of the Holy Places, the maintenance of common services, the investigation into the assassination of the Mediator, and finally the negotiation and conclusion of armistice agreements.⁹⁶ Some functions of the office of Mediator under the General Assembly overlapped with functions under the Security Council, but on the whole with respect to the functions of mediation and with regard to matters relating to a political settlement between Arabs and Jews, the Mediator and Acting Mediator were responsible to the General Assembly, whereas in matters relating to the cease-fire, truce and armistice they were responsible to the Security Council. The interdependence of the truce and mediation functions and the impossibility of maintaining a clear line of demarcation between them, however, was evident in the fact that, in the resolutions adopted by each of the principal organs, reference was made to the functions conferred on the Mediator by the other organ.

General Assembly resolution 181 (S-2) made no reference to the termination of the office of Mediator. The Security Council resolution of 15 July 1948 ordered a truce for an indefinite period. Upon the assassination of the Mediator, Dr. Bunche was empowered to assume full authority "until further notice". On 19 November 1948, the General Assembly adopted resolution 212 (III), establishing the United Nations Relief for Palestine Refugees, thus relieving the Acting Mediator

of his humanitarian functions regarding refugees. On 11 December 1948, the General Assembly, by resolution 194 (III), transferred the mediation functions to a newly created Conciliation Commission which was empowered (by paragraph 2a) "to assume, in so far as it considers necessary in existing circumstances, the functions given to the United Nations Mediator on Palestine by resolution 186 (S-2) . . ."

While the Acting Mediator was thus relieved of his mediation tasks by the General Assembly, the office of Mediator remained in existence and he still retained his functions with respect to the truce effort under the Security Council's resolutions. The Assembly's resolution of 11 December, however, also provided for the ultimate termination of the office of Mediator. The Conciliation Commission was asked by paragraph 2c "to undertake, upon the request of the Security Council, any of the functions now assigned to the United Nations Mediator on Palestine . . . upon such request to the Conciliation Commission by the Security Council with respect to all the remaining functions of the United Nations Mediator on Palestine under Security Council resolutions, the office of the Mediator shall be terminated".

At the 435th meeting on 8 August 1949, in connexion with the report of the Acting Mediator,⁹⁷ the representatives of Canada and France proposed "that all functions assigned to the United Nations Mediator on Palestine having been discharged, the Acting Mediator is relieved of any further responsibility under Security Council resolutions".⁹⁸ The representative of the USSR proposed the following amendment:

"Terminates the office of the United Nations Mediator on Palestine."⁹⁹

At the 437th meeting on 11 August 1949, the representative of the United States stated:

"The . . . Soviet Union amendment would end the Mediator's office . . . This the Security Council has no authority to do. The General Assembly established this office. The United States delegation believes that the draft of Canada and France more fittingly indicates that the functions of the Mediator have been discharged, and relieves the Acting Mediator of further responsibility under Security Council resolutions. Such a provision is consonant with the General Assembly resolution of 11 December 1948, which states that, when the Security Council relieves the Mediator of any further responsibilities, that office, established by the General Assembly, shall be automatically terminated."¹⁰⁰

The representative of the USSR withdrew his amendment, and accepted the text of the joint Canadian-French draft which, he stated, "would lead precisely to the result desired".¹⁰¹

Decision: *The Council adopted the Canadian-French draft resolution by 9 votes in favour, none against, with 2 abstentions.*¹⁰²

CASE 18

On 11 December 1948, the General Assembly established the United Nations Conciliation Commission for

⁹⁴ 277th meeting: pp. 38-39. The terms of reference under which the Commission had been established were not modified by the General Assembly or by the Security Council, and no instruction or directive was issued by the Council to the Commission.

⁹⁵ General Assembly resolution 186 (S-2).

⁹⁶ At the 310th meeting on 29 May 1948, the Council instructed the Mediator "to supervise the truce" and "to make a weekly report to the Security Council during the cease-fire"; and at the 338th meeting on 15 July 1948 "to continue his efforts to bring about the demilitarization of Jerusalem" and "to keep the Security Council currently informed concerning the operation of the truce, and when necessary to take appropriate action".

⁹⁷ S/1357, O.R., 4th year, Suppl. for Aug. 1949.

⁹⁸ 435th meeting: p. 3.

⁹⁹ 435th meeting: p. 7.

¹⁰⁰ 437th meeting: pp. 7-8.

¹⁰¹ 437th meeting: p. 11.

¹⁰² 437th meeting: p. 13.

Palestine. The Commission was instructed to carry out the specific functions and directives given to it by the resolution, and such additional functions and directives as might be given to it by the General Assembly or by the Security Council. The Commission was also to undertake any of the functions of the United Nations Mediator on Palestine "upon the request of the Security Council". The Commission was further instructed to communicate progress reports periodically to the Secretary-General for transmission to the Security Council and to the Members of the United Nations, and to report immediately to the Council any attempts to impede access to Jerusalem.¹⁰³

CASE 19

On 12 November 1948, the General Assembly established the United Nations Commission on Korea, and continued the Commission in being on 21 October 1949.¹⁰⁴ On 25 June 1950, the Commission informed the Secretary-General that attacks had been launched in strength by North Korean forces and suggested the possibility of bringing the matter to the attention of the Security Council.¹⁰⁵ A meeting was called the same day (473rd meeting on 25 June 1950) and the Council decided to request the Commission: "(a) to communicate its fully considered recommendations on the situation with the least possible delay, (b) to observe the withdrawal of the North Korean forces to the 38th parallel, and (c) to keep the Security Council informed on the execution of this resolution..."¹⁰⁶

Four reports in compliance with this directive were submitted by the Commission and considered by the Council at the 474th meeting on 27 June 1950.¹⁰⁷ The Council adopted a resolution recommending:

¹⁰³ General Assembly resolution 194 (III). See also resolutions 302 (IV), 394 (V).

¹⁰⁴ General Assembly resolutions 195 (III), 293 (IV).

¹⁰⁵ S/1946.

¹⁰⁶ 473rd meeting: pp. 14, 17.

¹⁰⁷ S/1503, S/1504, S/1505, S/1507, 474th meeting: p. 2.

"... that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area" after

"Having noted from the report of the United Nations Commission for Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel and that urgent military measures are required to restore international peace and security..."¹⁰⁸

The Commission completed its report to the General Assembly on 4 September 1950, and was terminated by the General Assembly on 7 October 1950.¹⁰⁹

F. RECEPTION OF RECOMMENDATIONS TO THE SECURITY COUNCIL ADOPTED BY THE GENERAL ASSEMBLY IN THE FORM OF RESOLUTIONS

[Note: Section F contains a tabulation of recommendations to the Security Council adopted by the General Assembly in the form of resolutions. The initial handling of recommendations from the General Assembly presents few, if any, procedural features peculiar to the material. In agreeing to consider General Assembly recommendations, the Council has on occasions formally decided to "accept" or "receive" a resolution,¹¹⁰ but the omission of such formal acceptance on other occasions has not been a mark of refusal to consider. So far as the substantive handling of recommendations is concerned, the diverse nature of the subjects dealt with makes classification meaningless. The table accordingly shows chronologically in each case what were the initial proceedings of the Council prior to the adoption or non-adoption of the item on the agenda of the Council. References to the records and to other cases in the *Reper-toire* are given, wherever appropriate, for further proceedings of the Council.]

¹⁰⁸ 474th meeting: p. 16. For full text see chapter VIII, p. 356.

¹⁰⁹ General Assembly resolution 376 (V).

¹¹⁰ See Tabulation, Entry Nos. 2, 5, 6, 10 and 11.

TABULATION OF RECOMMENDATIONS

Entry No.	General Assembly resolution	Subject of recommendation	Initial proceedings of the Security Council
1...1 (I)	24 January 1946	Report of Chairman of Atomic Energy Commission concerning provisional rules of procedure for the Commission	Included in the agenda at the 50th meeting on 10 July 1946 ^a
2...35 (I)	19 November 1946	Re-examination of certain applications for membership	Included in the agenda at the 81st meeting on 29 November 1946 ^b
3...36 (I)	19 November 1946	Rules governing the admission of new Members to the United Nations	Included in the agenda at the 81st meeting on 29 November 1946 ^c
4...40 (I)	13 December 1946	Voting procedure in the Security Council	Included in the agenda at the 197th meeting on 27 August 1947 ^d
5...41 (I)	14 December 1946	Principles governing the general regulation and reduction of armaments and armed forces	Included in the agenda at the 90th meeting on 9 January 1947 ^e
6...42 (I)	14 December 1946	Information on armed forces to be supplied by Members of the United Nations	Included in the agenda at the 105th meeting on 13 February 1947 ^f
7...113 (II)	17 November 1947	Reconsideration of the applications for membership of Transjordan and Italy	Included in the agenda at the 221st meeting on 22 November 1947 ^g
8...114 (II)	17 November 1947	Relation of Members of the United Nations with Spain	Included in the provisional agenda at the 327th meeting on 25 June 1948; the Council decided not to include the item in the agenda ^h
9...116 (II)	21 November 1947	Recommendation of new rules of procedure governing the admission of new Members	Included in the agenda at the 222nd meeting on 9 December 1947 ⁱ

TABULATION OF RECOMMENDATIONS (continued)

Entry No.	General Assembly resolution	Subject of recommendation	Initial proceedings of the Security Council
10...117	(II) 21 November 1947	Voting procedure in the Security Council	Included in the agenda at the 224th meeting on 19 December 1947 ¹
11...181	(II) 29 November 1947	Future government of Palestine	Included in the agenda at the 222nd meeting on 9 December 1947 ²
12...231	(III) 8 October 1948	Payment of travelling expenses and subsistence allowances to alternate representatives on certain Security Council commissions	Included in the agenda at the 448th meeting on 27 September 1949 ¹
13...192	(III) 19 November 1948	Prohibition of atomic weapons and reduction of armaments	Included in the agenda at the 408th meeting on 10 February 1949 ^m
14...197	(III) 8 December 1948	Admission of new Members	Included in the agenda at the 427th meeting on 16 June 1949 ⁿ
15...194	(III) 11 December 1948	Demilitarization of the Jerusalem area	Included in the agenda at the 453rd meeting on 28 October 1949 ^o
16...267	(III) 14 April 1949	Problem of voting in the Security Council	Included in the agenda at the 452nd meeting on 18 October 1949 ^p
17...268 B	(III) 28 April 1949	Appointment of a rapporteur or conciliator for a situation or dispute brought to the attention of the Council	Included in the agenda at the 472nd meeting on 24 May 1950 ^q
18...268 D	(III) 28 April 1949	Creation of panel for inquiry and conciliation	Not placed on the provisional agenda ^r
19...296	(IV) 22 November 1949	Admission of new Members	Not placed on the provisional agenda ^r
20...300	(IV) 5 December 1949	Regulation and reduction of conventional armaments and armed forces	Included in the agenda at the 462nd meeting on 17 January 1950 ^t
21...377	(V) 3 November 1950	Uniting for peace	Not placed on the provisional agenda ^u
22...378	(V) 17 November 1950	Duties of States in the event of the outbreak of hostilities	Not placed on the provisional agenda ^v
23...494	(V) 20 November 1950	Development of a 20-year programme for achieving peace through the United Nations	Not placed on the provisional agenda ^w
24...495	(V) 4 December 1950	Admission of new Members	Council decided at the 568th meeting on 18 December 1951 to include in the agenda and consider after resolution 550 (VI), since this resolution made no mention of urgency ^x
25...396	(V) 14 December 1950	Recognition by United Nations of representation of a Member State	Not placed on provisional agenda ^y
26...550	(VI) 7 December 1951	Admission of Italy to membership	Council decided at the 568th meeting on 18 December 1951 to include this item first in the agenda because of urgency ^y
27...502	(VI) 11 January 1952	Recommendation for dissolution of Commission for Conventional Armaments	Included in the agenda at the 571st meeting on 30 January 1952 ^z
28...503 B	(VI) 12 January 1952	Methods which might be used to maintain and strengthen international peace and security in accordance with purposes and principles of the Charter	Not placed on provisional agenda ^{bb}

^a 50th meeting: p. 7.

^b No objection was raised when the President (United States) declared adopted the first part of a proposal calling for the acceptance by the Council of resolution 35 (I). 81st meeting: p. 522.

^c 81st meeting: pp. 504-505. See chapter V, Case 32.

^d 197th meeting: p. 2281. See chapter V, Case 34.

^e No objection was raised when the President (Australia) proposed that the Council "formally register the acceptance by the Council" of resolution 41 (I). 90th meeting: pp. 41-42.

^f The Council adopted a resolution the preamble of which affirmed that the Council "accepted" resolution 42 (I). 105th meeting: p. 274.

^g 221st meeting: p. 2767. See also 280th meeting: p. 3.

^h 327th meeting: p. 9.

ⁱ 222nd meeting: p. 2771.

^j The Council accepted the proposal by the President (Australia) that the letter from the Secretary-General conveying resolution 117 (II) "be received" by the Council. 224th meeting: p. 2796.

^k The President (Australia) stated that the Council had received the communication from the Secretary-General en-

closing resolution 181 (II) and, having been seized of the matter, had decided to postpone discussion. See chapter XII, Case 21. 222nd meeting: p. 2788.

¹ 448th meeting: p. 10.

^m 408th meeting: p. 19.

ⁿ 427th meeting: p. 10.

^o 453rd meeting: p. 4.

^p 452nd meeting: p. 2.

^q 472nd meeting: pp. 15-16.

^r S/1323.

^s S/1425.

^t 462nd meeting: pp. 8-9.

^u S/1905.

^v S/1930.

^w S/1948.

^x 568th meeting: pp. 2-3.

^y S/1978.

^z 568th meeting: pp. 2-3.

^{aa} 571st meeting: pp. 1-2.

^{bb} S/2496.

G. REPORTS OF THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY

Article 24 (3) of the Charter

"The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration."

[*Note:* In accordance with Article 24 (3) of the Charter, the Security Council submits annual and, when necessary, special reports to the General Assembly. In accordance with Article 15 (1) of the Charter, the General Assembly receives and considers these reports which "shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security".

The accepted procedure with regard to the preparation of the annual reports of the Security Council includes the following stages:

- (i) Formulation of the first draft by the Secretariat
- (ii) Circulation of this draft as a confidential document among the representatives to the Council
- (iii) Discussion, submission of observations and amendments, and proposals for deletions at a closed meeting of the Council
- (iv) Final approval at a closed meeting of the Council, following which the annual report of the Security Council is published as a General Assembly document and submitted for its consideration.^{111]}

¹¹¹ At the 500th meeting on 12 September 1950, held in private, the Council approved the Fifth Annual Report by 10 votes to 1, with 1 abstention (500th meeting: p. 1).

Part II

RELATIONS WITH THE ECONOMIC AND SOCIAL COUNCIL

A. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLE 65 OF THE CHARTER

Article 65

"The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request."

CASE 20

At the 354th meeting on 19 August 1948, in connexion with the Palestine question, the representative of China observed that, while the question of refugees could be dealt with by the Security Council in view of its close connexion with the truce, the task of solving the problem as a whole was in the hands of the General Assembly. The representative of the United Kingdom, referring to the remarks of the representative of China, proposed that the record of the Council's discussion on the subject of refugees be transmitted to the Economic and Social Council and the International Refugee Organization "for any action that they may be able to take".¹

Decision: *The United Kingdom proposal was adopted without vote.*²

¹ 354th meeting: pp. 54-56.

² 354th meeting: p. 56.

CASE 21

By letter dated 14 March 1949, the Secretary-General transmitted to the President of the Security Council resolution 214 B (VIII) adopted by the Economic and Social Council on 16 February 1949, together with the relevant documentation concerning human rights in Palestine.³

CASE 22

At the 479th meeting on 31 July 1950, the representative of the Republic of Korea* drew the attention of the Council to the hardships and privations to which the people of Korea were being subjected as a result of hostilities. The President (Norway), on behalf of the representatives of France, Norway and the United Kingdom, submitted a joint draft resolution concerning Korean relief.⁴ The representative of the United States observed that the draft resolution invoked Article 65 for the first time.

Decision: *The joint draft resolution was adopted by 9 votes in favour, with 1 abstention.*⁵

³ S/1291.

⁴ S/1652, 479th meeting: p. 3.

⁵ 479th meeting: p. 5. One member (USSR) was absent. For text of the decision, see chapter VIII, p. 357.

Part III

RELATIONS WITH THE TRUSTEESHIP COUNCIL

NOTE

One trusteeship agreement has been submitted to and approved by the Security Council in accordance with Article 83 of the Charter. A summary statement of proceedings leading to the approval of the agreement is entered in chapter IX, and ancillary discussion bearing on Article 83 (1) has been entered in chapter XII. The approval of the agreement necessitated consideration of procedures for the application of Articles 87 and 88 concerning the functions of the Trusteeship Council. Proceedings on this aspect are entered in the present part of this chapter.

Article 83 of the Charter

"1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council.

" . . .

"3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under

the trusteeship system relating to political, economic, social, and educational matters in the strategic areas."

A. PROCEDURE UNDER ARTICLE 83 (3) IN APPLICATION OF ARTICLES 87 AND 88 OF THE CHARTER WITH REGARD TO STRATEGIC AREAS UNDER TRUSTEESHIP

CASE 23

By letter of 7 November 1947,¹ the Secretary-General observed that, as a result of the entry into force of the Trusteeship Agreement for the Pacific Islands on 18 July 1947,

"...it would seem essential therefore that procedures should now be formulated to govern the detailed application of Articles 87 and 88 of the Charter to this strategic area. Such procedures would seem, by the terms of Article 83 of the Charter, to require the approval of the Security Council."

The Security Council began consideration of the question at the 220th meeting on 15 November 1947. At that meeting, the President, speaking as the representative of the United States, submitted a draft resolution² requesting the Trusteeship Council:

"(a) To take such action as is called for by article 13 of the Agreement, to carry out the functions set forth in Articles 87 and 88 of the Charter in the Trust Territory of the Pacific Islands; and

"(b) To keep the Security Council informed through regular reports on action taken by the Trusteeship Council with respect to the Trust Territory of the Pacific Islands."

In introducing the draft resolution, he declared that the Council

"... should not undertake to establish a general rule for all strategic trusteeship agreements. I can conceive of strategic trusteeships, to be set up in the future, which might not be exactly like this one. Therefore, I think we ought to exercise care and not hastily lay down general rules that might affect such trusteeships in the future."

Upon the suggestion of the representative of the USSR, the whole question raised by the letter of the Secretary-General was referred to the Committee of Experts for study and report within four weeks.³

On 12 January 1948, the Committee of Experts submitted a preliminary report⁴ to the Security Council on the respective functions of the Security Council and the Trusteeship Council with regard to the Trusteeship System as applied to strategic areas. After discussing whether it should recommend to the Security Council the adoption of a resolution alone or rules of procedure alone, or both, the Committee decided by a majority to discuss first a draft resolution for recommendation to the Council. The Committee did not submit to the Council draft rules of procedure. The Committee also decided to recommend to the Council the adoption of a resolution applicable to strategic areas generally.

The majority of the Committee recommended to the Council the adoption of the following draft resolution:

"Whereas Article 83, paragraph 3, of the Charter provides that

"The Security Council shall, subject to the provision of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas',

The Security Council

Resolves:

"1. That the Trusteeship Council be requested, subject to the provisions of Trusteeship Agreements or parts thereof in respect of strategic areas, and subject to the decisions of the Security Council made having regard to security considerations from time to time, to perform in accordance with its own procedures, on behalf of the Security Council, the functions specified in Articles 87 and 88 of the Charter relating to the political, economic, social and educational advancement of the inhabitants of such strategic areas.

"2. That the Trusteeship Council be requested to send to the Security Council, one month before forwarding to the Administering Authority, a copy of the questionnaire formulated in accordance with Article 88 of the Charter and any amendments to such questionnaire which may be made from time to time by the Trusteeship Council.

"3. That the Secretary-General be requested to advise the Security Council of all reports and petitions received from or relating to strategic areas under trusteeship, and to send copies thereof, as soon as possible after receipt, to the Trusteeship Council for examination and report to the Security Council.

"4. That the Trusteeship Council be requested to submit to the Security Council its reports and recommendations on political, social, economic and educational matters affecting strategic areas under trusteeship."

To the report was annexed the following draft resolution which had been submitted by the Polish member of the Committee and supported by the USSR member for recommendation to the Security Council:

Taking into consideration the entry into force of the Trusteeship Agreement for the Pacific Islands on 18 July 1947, the Security Council decides:

"1. Pursuant to Article 83, paragraph 1, of the Charter, to exercise all functions of the United Nations relating to strategic areas under trusteeship; and

"2. To avail itself of the assistance of the Trusteeship Council in the performance of its functions under the Trusteeship System relating to political, economic, social and educational matters in the strategic areas, subject to the provisions of the above-mentioned Trusteeship Agreement and without prejudice to security considerations after having examined in each case separately the circumstances of the task to be performed;

"3. To instruct the Committee of Experts to prepare within three weeks for the approval of the Security Council a draft questionnaire provided for

¹ S/599, 220th meeting: p. 2753, footnote 1.

² 220th meeting: p. 2757-2760.

³ 220th meeting: p. 2763.

⁴ S/642, O.R., 3rd year, Suppl. for June 1948, pp. 1-10.

by Article 88 of the Charter, adapted to the conditions and needs of strategic areas under trusteeship;

"4. To request the Secretary-General to submit to the Security Council all petitions received from or relating to strategic areas under trusteeship for examination by the Security Council itself, or through the Trusteeship Council, as the case may be;

"5. To provide for periodic visits to the strategic areas under trusteeship and to perform them either itself or through the Trusteeship Council as the case may be."

The report of the Committee of Experts was considered by the Security Council at its 320th meeting on 15 June 1948. At the same meeting, attention of the Council was drawn to a letter from the President of the Trusteeship Council of 17 December 1947,⁵ transmitting a resolution of the latter organ. The resolution authorized a Committee of the Trusteeship Council

"... to confer with the President or a similar Committee of the Security Council with a view to assuring that, before the Security Council makes a final decision on the arrangements to be made with regard to the functions of the Trusteeship Council in respect of strategic areas under trusteeship in relation to the political, social, economic and educational advancement of the inhabitants, the responsibilities of the Trusteeship Council be fully taken into account."

At the 324th meeting on 18 June 1948, a proposal made by the President (Syria) to establish a committee of three to consult with the committee of the Trusteeship Council was adopted.⁶

At the 327th meeting on 25 June 1948, the President reported that agreement had not been reached at the first joint meeting of the committees of the two Councils. It was agreed not to fix a date for further discussion of the question until the Trusteeship Council had held a plenary meeting to define its attitude on the matter.⁷

At the 415th meeting on 7 March 1949, the Council had before it the report of its committee on the second joint meeting of 22 July 1948.⁸ At the joint meeting the President of the Trusteeship Council had presented the views of the latter as follows:

"Having discussed the matter in some detail, the Trusteeship Council has authorized its Committee to inform you that the arrangements envisaged in the draft resolution recommended to the Security Council by its Committee of Experts would, subject to what I am about to say, be generally acceptable to the majority of the members of the Trusteeship Council—indeed, to all the members save one.

"The Trusteeship Council notes that, under the first paragraph, the Council retains wide freedom of action in relation to strategic areas under trusteeship in all matters not concerned with questions of security, including consideration of reports, ex-

amination of petitions and sending of visiting missions—subject, of course, to the terms of the relevant Trusteeship Agreements. Such an arrangement would be entirely acceptable to the Trusteeship Council.

"The second paragraph of the draft resolution would require the Trusteeship Council to send to the Security Council, one month before forwarding it to the Administering Authority concerned, a copy of the Questionnaire formulated by the Trusteeship Council with respect to a strategic area under trusteeship. The purpose of such prior scrutiny by the Security Council is not explicitly stated, but we understood at the previous meeting of our two Committees that the Questionnaire would be forwarded for approbation, as you put it, by the Security Council. The view of the Trusteeship Council is that the Security Council alone is competent to judge of security considerations, and that if, *for security reasons*, it desired to delete certain questions from such a questionnaire formulated by the Trusteeship Council, or to add certain questions, the Trusteeship Council could raise no objection. If, on the other hand, the Security Council were to request the Trusteeship Council to reframe, add or delete questions concerning, say, the educational advancement of the inhabitants of a strategic area under trusteeship—not for security reasons, but merely because the Security Council considered that the modifications it proposed were better designed to elucidate the state of educational advancement in the area—then the Trusteeship Council would not feel itself obliged to accede to such a request if it deemed that the request was not justified; since, where no considerations of security are involved, the Trusteeship Council believes that it alone is the competent judge in such matters.

"The third paragraph of the draft resolution would confer on the Trusteeship Council the duty to examine all reports and petitions received from strategic areas under trusteeship, and to report thereon to the Security Council. Here it is not clear whether the Trusteeship Council would be at liberty to proceed to dispose of all such reports and petitions in accordance with its normal procedure before reporting to the Security Council, or whether its functions would be strictly limited to examining and reporting to the Security Council. If the former interpretation be the correct one, the paragraph is entirely acceptable to the Trusteeship Council. The Trusteeship Council appreciates, of course, that in these, as in all other matters, it has no competence to handle questions involving considerations of security, and it would not therefore dispose of a report or petition which touched on such matters. The Trusteeship Council feels, however, that, as the Security Council would be advised of all such reports and petitions immediately upon their arrival, it would have ample opportunity to forestall any action by the Trusteeship Council on any report, petition or part thereof which involved security considerations.

"The fourth and final paragraph of the draft resolution is entirely acceptable to the Trusteeship Council..."

Decision: At the 415th meeting on 7 March 1949, the Council adopted the draft resolution proposed by

⁵ S/632, O.R., 3rd year, Suppl. for Jan., Feb. and March 1948, p. 1.

⁶ 324th meeting: pp. 16-17.

⁷ 327th meeting: pp. 9-10.

⁸ S/916, O.R., 4th year, Suppl. for March 1949, pp. 1-3.

the majority of the Committee of Experts⁹ by 8 votes in favour, with 3 abstentions.¹⁰

At the same meeting the President (Cuba) stated, without objection, that the interpretation of the resolution "shall be that which was submitted by the majority of the Committee of the Trusteeship Council"¹¹ (statement of the President of the Trusteeship Council, *supra*).

By letter of 25 March 1949,¹² the President of the Trusteeship Council transmitted for the information of the Security Council the text of the following resolution adopted by the Trusteeship Council at its forty-sixth meeting:

"The Trusteeship Council,

"Having considered the resolution adopted by the Security Council at its 415th meeting on 7 March 1949 on the question of the functions of the Trusteeship Council in respect of strategic areas under trusteeship;

"Noting that this resolution was recommended to the Security Council by its Committee of Experts and that the interpretation given to it by the Trusteeship Council as set forth in document S/916 has met with the approval of the Security Council;

"Decides to undertake, in accordance with Article 83 (3) of the Charter and in the light of the Security Council's resolution and the interpretation given to it by the Trusteeship Council, those functions of the United Nations under the International Trusteeship System relating to political, economic, social and educational matters in the strategic areas under trusteeship;

"Decides to transmit to the Security Council a copy of the Provisional Questionnaire adopted by the Trusteeship Council at the 25th meeting of the first session for its consideration in accordance with paragraph 2 of the above-mentioned resolution;

"Requests the Secretary-General, if no observations are made by the Security Council within one month, to transmit the Provisional Questionnaire to the Government of the United States of America as the Administering Authority for the Trust Territory of the Pacific Islands."

ANNEX

At the 415th meeting on 7 March 1949, in connexion with the procedure under Article 83 (3) in application of Articles 87 and 88 of the Charter with regard to strategic areas under trusteeship, the representative of the United States stated:¹³

"The Security Council of course would retain full and ultimate responsibility for all action which the United Nations may take in regard to strategic areas. In so far as the Trusteeship Council would act in this matter, it would act on behalf of the Se-

curity Council. The Security Council, if it passed this resolution, would not in any way give up its responsibilities or its right to make further requests or recommendations to the Trusteeship Council in connexion with any matters dealt with in the proposal. It would merely recognize that, in view of the fact that the Trusteeship Council is far better fitted to perform the functions specified in Articles 87 and 88 of the Charter, and in view of the obligation—I say 'obligation'—of the Security Council to avail itself in this respect of the assistance of the Trusteeship Council, the most sensible arrangement would be to do so by a general request.

"... Such a course of action would be in keeping with the responsibilities of the Trusteeship Council as one of the principal organs of the United Nations, and would avoid that constant friction between the two Councils which we fear would result if, each time a problem arose, we had to decide which organ was to deal with it."

The representative of the USSR stated:¹⁴

"The USSR delegation feels obliged to point out, however, that the draft resolution of the Committee of Experts has one shortcoming: it is too general. According to its terms, the Security Council would determine its relation with the Trusteeship Council not only as regards strategic areas in the Pacific Ocean under United States trusteeship, for which the Security Council has approved a Trusteeship Agreement, but also as regards all areas which might be placed under trusteeship in the future under terms that are as yet unknown. Because of this defect, the USSR delegation feels unable to vote for the draft resolution proposed by the majority of the Committee of Experts, although it does not object to the definition of the work of the Trusteeship Council as regards strategic areas under United States trusteeship which that resolution provides."

B. TRANSMISSION TO THE SECURITY COUNCIL BY THE TRUSTEESHIP COUNCIL OF QUESTIONNAIRES AND REPORTS

CASE 24

At the request of the Trusteeship Council, the Secretary-General transmitted to the Security Council a Provisional Questionnaire drawn up by the Trusteeship Council relating to the Trust Territory of the Pacific Islands, designated as a strategic area.¹⁵ No observations having been made on the Provisional Questionnaire by the Security Council within one month, it was transmitted to the Government of the United States of America as Administering Authority on 3 May 1949.

As of 31 December 1951, the Secretary-General had transmitted to the Security Council the following Reports of the Trusteeship Council on the exercise of its functions in respect of strategic areas under trusteeship:

First Report adopted during the fifth session of the Trusteeship Council, 22 July 1949.¹⁶

⁹ S/642, 415th meeting: pp. 6-7.

¹⁰ 415th meeting: p. 9.

¹¹ 415th meeting: p. 9. For texts of relevant statements see: 220th meeting: President (United States), pp. 2754-2757.

324th meeting: Ukrainian SSR, pp. 1-3; USSR, pp. 3-7, 10-11; United Kingdom, pp. 11-12.

415th meeting: Egypt, pp. 10-11; USSR, pp. 7-9; United States, pp. 2-5.

¹² S/1301.

¹³ 415th meeting: pp. 2-5.

¹⁴ 415th meeting: pp. 8-9.

¹⁵ S/1358.

¹⁶ S/1358.

Second Report adopted during the seventh session of the Trusteeship Council, 14 July 1950;¹⁷

Third Report adopted during the eighth session of the Trusteeship Council, 12 March 1951.¹⁸

¹⁷ S/1628.

¹⁸ S/2069.

Part IV

RELATIONS WITH THE INTERNATIONAL COURT OF JUSTICE

Article 94 of the Charter

"1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

"2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

Article 96 of the Charter

"1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

"2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities."

Material relating to Article 36 (3) of the Charter is included under that Article in chapter X.

As of December 1951, the International Court had not handed down an advisory opinion on the request of the Security Council. On one occasion a formal proposal to request an advisory opinion was adopted, but the Court had no occasion to render an advisory opinion since the Legal (Sixth) Committee of the General Assembly proposed a rule of procedure on the problem which proved acceptable to the Security Council.¹ Other draft resolutions to request an advisory opinion have been voted upon and rejected.

The following proposals to request advisory opinions were formally submitted to the Council, but were not voted upon:

(i) By the representative of China in connexion with the voting procedure of the Security Council during consideration of the complaint of armed invasion of Taiwan (Formosa), at the 507th meeting on 29 September 1950;²

(ii) By the representative of Egypt* in connexion with the voting procedure of the Security Council during consideration of the Palestine question, at the 555th meeting on 27 August 1951.³

There have also been suggestions made by members of the Council not in the form of formal proposals. Such suggestions were made on the following occasions:

(i) By the representative of the United Kingdom in connexion with the Spanish question, at the 46th meeting on 17 June 1946;⁴

(ii) By the representative of the Netherlands in connexion with the admission of new Members, at the 56th meeting on 29 August 1946;⁵

(iii) By the representative of Pakistan in connexion with the Hyderabad question, at the 426th meeting on 24 May 1949;⁶

(iv) By the representative of Ecuador in connexion with the Anglo-Iranian Oil Company case, at the 562nd meeting on 17 October 1951.⁷

A. THE CONDITIONS UNDER WHICH THE INTERNATIONAL COURT OF JUSTICE SHALL BE OPEN TO STATES NOT PARTIES TO THE STATUTE

CASE 25

By letter dated 1 May 1946,⁸ the President of the International Court of Justice requested information

¹ Case 26.

² 507th meeting: pp. 5-7. For discussion on the Chinese proposal see chapter IV, Cases 99 and 106.

³ S/2313, 555th meeting: p. 16. For discussion of the Egyptian draft resolution see chapter IV, Case 120.

⁴ 46th meeting: p. 347.

⁵ 56th meeting: pp. 95-96.

⁶ 426th meeting: p. 8.

⁷ 562nd meeting: pp. 156-160.

⁸ S/99, O.R., 1st year, 2nd series, Suppl. No. 1, pp. 8-12.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Article 35 of the Statute

"1. The Court shall be open to the states parties to the present Statute.

"2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court."

Article 41 of the Statute

"1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

"2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council."

NOTE

Section A presents the conclusions of the Security Council regarding the conditions under which the International Court of Justice should be open to states not parties to the Statute.

Section B presents the considerations adduced in the Security Council regarding requests for advisory opinions.

Section C presents the argumentation in connexion with a proposal for measures by the Security Council to ensure the observance of provisional measures indicated by the Court under Article 41 of the Statute of the International Court of Justice.

on any decision the Security Council might see fit to take in accordance with Article 35 (2) of the Statute of the International Court of Justice, in the matter of access to the Court by States not parties to the Statute.

At its 50th meeting on 10 July 1946, the Council referred the matter to the Committee of Experts.⁹

At the 76th meeting on 15 October 1946, the Council had before it the report of the Committee in which the Committee submitted a draft resolution with certain observations thereon. The Committee indicated that the draft resolution constituted a solution of the problem analogous to the resolution adopted by the Council of the League of Nations on 17 May 1922, with modifications necessary to adapt the text to the provisions of the Charter and the new Statute.

"Thus, the last sentence of the first paragraph of that resolution, providing that the Court is open to any non-member State of the League of Nations or not mentioned in the Annex to the Covenant, on condition that 'such State shall not resort to war against a State complying with the decisions' (of the Court), has been omitted, because that condition was based upon a provision of the Covenant which underlies the Charter as a principle and for that reason does not appear in the corresponding section of that document. Another provision, which requires a State not party to the Statute to accept all the obligations imposed upon a Member of the United Nations by Article 94 of the Charter, has been substituted for the former condition.

"The second paragraph of the draft resolution refers to the types of declaration which may be made by a State not party to the Statute in order to obtain access to the Court.

"In this connexion, it should be emphasized that the mere deposit of a declaration does not suffice to confer on the Court jurisdiction over a specific case. A State party to the Statute cannot, without its consent, be brought before the Court by a State not party to the Statute. The mutual consent of both parties to the dispute, either for a particular case or generally for future cases, is required for the Court to be seized of a dispute.

"An express reservation has been made in paragraph 2 of the draft resolution to prevent a State party to the Statute, having recognized the Court's compulsory jurisdiction, from being bound by the fact that a State not a party to the Statute accepts the compulsory jurisdiction of the Court under Article 36, paragraph 2, of the Statute.

"The Committee accepted a revision whereby the passage 'and to such other States as the Court may determine', which appears in the text of the 1922 resolution, was deleted and replaced, in the third paragraph of the draft resolution, by the words 'and to such other States as shall have deposited a declaration under the terms of this resolution'. The Committee considers that notification of declarations by the Court is of a purely informative nature and does not change the status of a State so notified in relation to the Court."¹⁰

At the 76th meeting on 15 October 1946, the Security Council adopted unanimously the draft resolution submitted by the Committee of Experts.¹¹ The resolution read as follows:

"The Security Council of the United Nations in virtue of the powers conferred upon it by Article 35, paragraph 2, of the Statute of the International Court of Justice, and subject to the provision of that Article,

"Resolves that:

"(1) The International Court of Justice shall be open to a State which is not a party to the Statute of the International Court of Justice, upon the following condition, namely: that such State shall previously have deposited with the Registrar of the Court a declaration by which it accepts the jurisdiction of the Court, in accordance with the Charter of the United Nations and with the terms and subject to the conditions of the Statute and rules of the Court, and undertakes to comply in good faith with the decision or decisions of the Court and to accept all the obligations of a Member of the United Nations under Article 94 of the Charter.

"(2) Such declaration may be either particular or general. A particular declaration is one accepting the jurisdiction of the Court in respect only of a particular dispute or disputes which have already arisen. A general declaration is one accepting the jurisdiction generally in respect of all disputes or of a particular class or classes of disputes which have already arisen, or which may arise in the future.

"A State, in making such a general declaration may, in accordance with Article 36, paragraph 2, of the Statute, recognize as compulsory, *ipso facto*, and without special agreement, the jurisdiction of the Court, provided, however, that such acceptance may not, without explicit agreement, be relied upon *vis-à-vis* State parties to the Statute, which have made the declaration in conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice.

"(3) The original declarations made under the terms of this resolution shall be kept in the custody of the Registrar of the Court, in accordance with the practice of the Court. Certified true copies thereof shall be transmitted, in accordance with the practice of the Court, to all States parties to the Statute of the International Court of Justice, and to such other States as shall have deposited a declaration under the terms of this resolution, and to the Secretary-General of the United Nations.

"(4) The Security Council of the United Nations reserves the right to rescind or amend this resolution by a resolution which shall be communicated to the Court and, on the receipt of such communication and to the extent determined by the new resolution, existing declarations shall cease to be effective except in regard to disputes which are already before the Court.

"(5) All questions as to the validity or the effect of a declaration made under the terms of this resolution shall be decided by the Court."

⁹ 50th meeting: pp. 7-8.

¹⁰ S/169, O.R., 1st year, 2nd Series, Suppl. No. 6, pp. 153-156.

¹¹ 76th meeting: p. 468.

B. PRACTICES AND PROCEEDINGS IN RELATION TO ADVISORY OPINIONS

CASE 26

At the 9th meeting on 6 February 1946, in connexion with the first election of judges of the International Court of Justice, divergent views were expressed concerning the requirements of Articles 11 and 12 of the Statute. In submitting a compromise proposal for the conduct of elections at the 9th meeting, the representative of the United Kingdom indicated his intention of proposing that the Council ask the Court for an advisory opinion on this matter. After the election result had been announced, the representative of the United Kingdom moved¹² that the Council

“ . . . propose to the Assembly that we should ask, either as separate bodies, or the Assembly should ask, for an advisory opinion of the Court, when it is established, on this point.”

The proposal was adopted without vote.¹³ The representatives of the USSR inquired whether the question to be transmitted to the Court would concern the election of a particular judge or “a more general question.” The President (Australia) replied that “a more general question relating to the interpretation of the Charter” would be submitted to the Court.¹⁴

At the 138th meeting on 4 June 1947, the Security Council considered a draft rule of procedure on this subject which had been adopted by the General Assembly on the recommendation of the Sixth Committee.¹⁵ The report of the Sixth Committee, which was transmitted to the Council,¹⁶ took note of the “suggestion that the Court itself should be asked to give an advisory opinion as to the requirements of Articles 11 and 12”, but concluded:

“At the present stage the Sixth Committee does not recommend any action should be taken to request an advisory opinion on this matter from the International Court of Justice.”

The Security Council, concurring in the resolution of the Assembly, adopted rule 61 concerning the application of Articles 11 and 12 of the Statute.¹⁷

CASE 27

At the 194th and 195th meetings on 25 and 26 August 1947, in connexion with the Indonesian question (II), the Council considered a Belgian draft resolution¹⁸ to request the International Court of Justice, under Article 96 of the Charter, to give an advisory opinion on whether the Security Council was competent to deal with the question.¹⁹

Statements in support of the Belgian draft resolution were made by the representatives of France and

the United Kingdom on the grounds that it would help build up a body of rules concerning the question of competence, based on the opinion of the highest legal authority under the Charter. The representative of the United States had doubts only on the question whether the Council had competence “to impose a particular method of peaceful settlement” but, for reasons of courtesy and out of consideration for the doubts of others, he supported the Belgian draft resolution to refer the broader questions of jurisdiction to the Court for an advisory opinion.²⁰

In the course of the discussion the following points concerning the request for an advisory opinion were discussed:

i. Method of initiating a request

The method of initiating a request for an advisory opinion had been discussed earlier at the 173rd meeting on 1 August 1947, in connexion with a French suggestion that the Council request an advisory opinion from the Court as to whether the Council had competence in the case before it to take decisions beyond “an appeal on humanitarian grounds” for the cessation of hostilities. In opposing any reservation regarding the Council's competence, as suggested by the representatives of France and the Netherlands, the representative of Colombia observed that:

“ . . . the Netherlands Government can, at any time after making its reservations here, apply to the Court to test the legality of the resolution. That seems to be the ordinary course.”

The representative of the Netherlands* replied:²¹

“ . . . advisory opinions can be requested only by a body authorized to that effect by or in accordance with the Charter of the United Nations. The Security Council or certain other organs can, but a Member State cannot.” No action was taken on the French suggestion.²²

ii. The effect of a request for an advisory opinion upon continued consideration by the Council and upon implementation of prior decisions in the case

The representative of the USSR observed that the adoption of the Belgian draft resolution would cast doubt on the decision taken at the 173rd meeting.²³ The representative of the United Kingdom was of the opinion that a request for an advisory opinion could not “possibly present or delay action on the resolutions already adopted by this Council”. The representative of the United States supported the Belgian draft resolution while his own draft resolution (S/514) to provide good offices was pending. He was of the opinion that

“Pending a ruling from the International Court, the question of jurisdiction will not arise at any stage of the exercise of these good offices because they will be exercised by the Council at the request of the parties concerned.”

¹² 9th meeting: pp. 156-160.

¹³ 9th meeting: p. 160.

¹⁴ 9th meeting: p. 164.

¹⁵ Members of the General Assembly had raised the question of obtaining an advisory opinion independently. This item was placed on the agenda of the General Assembly and transmitted to the Sixth Committee. *G.A.O.R., plenary meetings, 1st part, 1st session*, p. 666.

¹⁶ A/191 was transmitted with S/260.

¹⁷ For the consideration of rule 61, see part I, section D.

¹⁸ S/517, 194th meeting: p. 2193.

¹⁹ For text, see chapter XII, Case 9.

²⁰ For texts of relevant statements see:

194th meeting: Belgium, p. 2194.

195th meeting: Belgium, p. 2214; France, pp. 2214-2215; United Kingdom, pp. 2218-2219; United States, p. 2222.

²¹ For texts of relevant statements see: 173rd meeting: Colombia, p. 1693; France, p. 1678; Netherlands, p. 1695.

²² 173rd meeting: pp. 1712-1713.

²³ 173rd meeting: p. 1710.

The representative of France, recalling the adoption of the United States draft resolution at the 194th meeting, was of the opinion that reference to the International Court could not in the circumstances in any way retard or embarrass such decisions as the Council might take subsequently. The representative of China was of the opinion that the appropriate occasion for a resolution requesting an advisory opinion had passed. He maintained, however, that if the Council did request an advisory opinion it did not have to cease all action in the matter since it would not be seeking a judgment but an opinion. As regards the consequences of an opinion, he stated:

" . . . Once it was presented to us, we could not very well disregard it. Legally, we are not bound to accept such an opinion; morally, however, it would be a very grave matter indeed if such an opinion were to be set at naught by the Council."

The representative of India also stressed the continuing responsibility of the Council after the Court had handed down an opinion. In reply to those who contended that the adoption of the Belgian draft resolution would serve as a useful precedent, the representative of Australia observed that in every case the facts and circumstances were different.²⁴

iii. *Whether the question was legal or political*

The representative of Belgium maintained that the subject of the advisory opinion fell within the competence of the Court. The representative of Australia stated:

"If this were a purely legal, technical question, my delegation would support such a resolution. But this is not purely a legal question; it has grave political implications and affects world security."

The representative of the USSR observed that the adoption of the Belgian draft resolution would divert attention "from the substance of the question to legal considerations of secondary importance". The representative of India questioned whether a legal question was involved. The representative of Poland stated:²⁵

"The Belgian representative invoked Article 96 of the Charter. Article 96 states that the General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. The question of competence, however, is not a legal question; it is a political question; it is a question on which a decision can be taken only by the Security Council."

iv. *Regarding the priority to be given to a draft resolution to request an advisory opinion*

At the 194th meeting, several draft resolutions were pending concerning the settlement of the Indonesian question (II). The representative of Belgium raised a point of order in connexion with the priority which the President had given to the pending draft resolutions. He maintained that the question of jurisdiction

was a preliminary question which took priority over all others. All other motions, he observed, assumed in advance that the question of jurisdiction had been decided in the affirmative.²⁶ The representative of Belgium moved that his draft resolution be given priority in accordance with rule 32.²⁷ The Belgian motion was rejected, having failed to obtain the affirmative votes of 7 members.²⁸

At the 194th meeting, the representative of the United Kingdom submitted an amendment to the Belgian draft resolution. He was of the opinion that while the draft resolution asked for "a simple answer, yes or no", it would be more useful for the Council "to have the rather more extensive and reasoned opinion which we might expect from the International Court of Justice". The representative of the United Kingdom proposed that the operative part of the draft resolution be amended to request an "advisory opinion concerning the competence of the Security Council to deal with the aforementioned question".²⁹ The representative of Belgium accepted the United Kingdom amendment.³⁰ Before his draft resolution was put to the vote at the 195th meeting, the representative of Belgium remarked that, if the views of those who had opposed his request were upheld, the Court might "remain in its present state of inactivity and . . . become a useless institution".³¹

Decision: *The Belgian draft resolution, as amended, was rejected, having failed to obtain the affirmative votes of seven members.*³²

CASE 28

At the 334th meeting on 13 July 1948, in connexion with the Palestine question, the representative of Syria submitted a draft resolution³³ to request

" . . . the International Court of Justice, pursuant to Article 96 of the Charter, to give an advisory legal opinion as to the international status of Palestine after the termination of the Mandate".

In introducing the draft resolution, the representative of Syria observed that a pending United States draft resolution,³⁴ raised the question of the international status of Palestine. He also referred to the relation of this question to the action which was contemplated under Chapter VII, suggested several questions to be submitted to the Court³⁵ and mentioned the possibility of establishing a sub-committee to draw up the questions. He also recalled General Assembly resolution 171 (II) which recommended that more use be made of the International Court of Justice.

Discussion on the Syrian and United States draft resolutions took place from the 334th to 338th meetings from 13 through 15 July 1948. Consideration of the Syrian draft resolution continued, after the adoption of the United States draft resolution as amended,³⁶ at the 339th and 340th meetings on 27 July 1948. In

²⁴ 194th meeting: p. 2193.

²⁷ For consideration of the application of rules 32 and 33 in this case, see chapter I, Case 74.

²⁸ 194th meeting: p. 2196.

²⁹ 194th meeting: p. 2210.

³⁰ 195th meeting: p. 2214.

³¹ 195th meeting: p. 2224.

³² 195th meeting: p. 2224.

³³ S/894, 334th meeting: pp. 52-53.

³⁴ S/890, 334th meeting: pp. 40-41.

³⁵ 334th meeting: pp. 52-53; 337th meeting: p. 12.

³⁶ S/902, O.R., 3rd year, Suppl. for July 1948, p. 76.

²⁴ For texts of relevant statements see:

194th meeting: USSR, pp. 2210-2211; United States, p. 2201.

195th meeting: Australia, pp. 2215-2217; China, pp. 2217-2218; France, p. 2215; India, pp. 2219-2220; United Kingdom, p. 2218.

²⁵ For texts of relevant statements see:

194th meeting: USSR, p. 2211.

195th meeting: Australia, pp. 2215-2217; Belgium, p. 2214; Poland, p. 2222.

the course of the discussion, the following points concerning the request for an advisory opinion were discussed:

i. *The effect of a request for an advisory opinion upon continued consideration by the Council and upon implementation of prior decisions in the case*

The representatives of Belgium and Colombia, speaking in support of both the United States and the Syrian draft resolutions, were of the opinion that a request would not delay either the cessation of hostilities or the settlement of the question. The representative of the USSR, speaking after the adoption of the United States draft resolution, declared that the Syrian draft resolution was unacceptable since it might affect the implementation of the decisions taken by the Council as well as General Assembly resolution 181 (II) of 29 November 1947. In reply the representative of Syria stated:³⁷

"... I confirm it now, that this resolution would not hinder the implementation of the other resolution (S/902)... The purpose of this resolution is merely to obtain a legal advisory opinion; the resolution which was adopted this evening would proceed in its own way. There is no danger that one would obstruct the other."

At the 339th meeting the representative of Colombia submitted an amendment³⁸ to add to the Syrian draft resolution the following sentence:

"This request should be made provided it will not delay or impair the normal process of mediation."

In explaining the purpose of the amendment, the representative of Colombia mentioned that under his amendment the Mediator himself might be able to refer questions of a judicial nature to the Court. The representative of Syria accepted the Colombian amendment.³⁹

ii. *Whether the question was legal or political*

As regards the contention that this was a political question, the representative of Syria observed:

"If the Court decides that this is a political question and that the Court should have nothing to do with it, it may do so and return the question to us as not within the competence of the Court..."

He also drew the attention of the Council to the basis of his request. The request was not made under Article 36 (3) concerning the pacific settlement of a question, but under Article 96, which, he contended, covered "any legal aspect of any question that comes before the Security Council at any time". Having recalled that his delegation had supported an earlier unsuccessful proposal in the General Assembly to request an advisory opinion, the representative of France expressed the view that the Palestine question had become too complex and was "obviously of much too political a character to hope that it could be settled by judges bound only by law". The representative of

the USSR was of the opinion that a request for an advisory opinion under Article 96 "should be made before and not after a decision is taken". As regards the request for an advisory opinion under Article 96 regarding the status of Palestine, the representative of Israel⁴⁰ stated that the Court could only be asked legal questions and that "it is certain that the existence of a State is a question of fact and not of law".⁴⁰

iii. *Relations of the Security Council with the International Court of Justice*

The representative of Syria maintained that among the differences between his draft resolution and the Belgian draft resolution in connexion with the Indonesian question (II) was that, since the rejection of that draft resolution,⁴¹ the General Assembly had adopted a resolution recommending recourse to the Court for the interpretation of the Charter and all matters with legal aspects. The President, speaking as the representative of the Ukrainian SSR, stated that the International Court of Justice could not be regarded as a kind of court of appeal from the decisions of the General Assembly and the Security Council.⁴²

When the President (Ukrainian SSR) put the Syrian draft resolution, as amended by the representative of Colombia, to the vote, the representative of Syria deleted the words "after the" and substituted the words "arising from" (the termination of the mandate).⁴³

Decision: *The Syrian draft resolution was rejected, having failed to obtain the affirmative votes of seven members.*⁴⁴

C. PRACTICES AND PROCEEDINGS IN RELATION TO ARTICLE 94 (2) OF THE CHARTER AND ARTICLE 41 (2) OF THE STATUTE

CASE 29⁴⁵

On 11 July 1951, pursuant to Article 41, paragraph 2, of the Statute of the International Court of Justice, a copy of the Order of 5 July 1951 indicating, at the request of the United Kingdom, interim measures of protection in the Anglo-Iranian Oil Company case, was transmitted to the members of the Security Council.⁴⁶

By letter dated 29 September 1951,⁴⁷ the representative of the United Kingdom requested the Security Council to consider the complaint "of failure by the Iranian Government to comply with provisional meas-

³⁷ For texts of relevant statements see:

336th meeting: France, p. 24.

338th meeting: Israel, p. 69; Syria, p. 67; USSR, p. 67.

339th meeting: Syria, pp. 2-9; USSR, p. 15.

340th meeting: Israel, p. 29.

³⁸ For consideration of the Belgian draft resolution, see Case 27.

³⁹ For texts of relevant statements see:

337th meeting: Syria, p. 11.

338th meeting: President (Ukrainian SSR), pp. 30, 68; USSR, p. 67.

339th meeting: Syria, p. 5.

⁴⁰ 340th meeting: p. 33.

⁴¹ 340th meeting: pp. 33-34.

⁴² For discussion on the claim of domestic jurisdiction, see chapter XII, Case 19.

⁴³ S/2239, O.R., 6th year, Suppl. for Oct., Nov. and Dec. 1951, p. 1.

⁴⁴ S/2357, O.R., 6th year, Suppl. for Oct., Nov. and Dec. 1951, pp. 1-2.

See also chapter VIII, for the proceedings of the Council.

³⁷ For texts of relevant statements see:

335th meeting: Belgium, pp. 4-5; China, pp. 6, 34; Egypt, p. 13.

336th meeting: Colombia, p. 26; France, p. 24.

338th meeting: Egypt, p. 68; Syria, p. 67; USSR, p. 67.

339th meeting: Argentina, pp. 12-13; Canada, pp. 11-12; China, p. 14; Colombia, p. 10; USSR, p. 15; United Kingdom, p. 13.

³⁸ S/921, 339th meeting: p. 12.

³⁹ 339th meeting: p. 18.

ures indicated by the International Court of Justice in the Anglo-Iranian Oil Company case".

In the consideration of the question by the Council two issues arose concerning the relations of the Council with the International Court of Justice.

i. *The responsibilities of the Security Council in respect of provisional measures indicated by the International Court of Justice under Article 41 of the Statute*

Appended to the letter of submission of the United Kingdom was a draft resolution the preamble of which recited the events consequent on the indication of provisional measures by the International Court of Justice. By the operative clauses, the Security Council was to call upon the Government of Iran "to act in all respects in conformity with the provisional measures recommended by the Court and, in particular, to permit the continued residence in Abadan of the staff affected by the recent expulsion orders..."

At the 559th meeting on 1 October 1951, in connexion with the inclusion of the item in the agenda, the representative of the United Kingdom urged that the decision of the Court on interim measures would alone justify the Council in taking up the matter since it gave rise to international obligations under the Charter which it was "the right and duty of the Security Council to uphold". He contended that the notification to the Council of provisional measures in accordance with Article 41, paragraph 2, of the Statute of the Court clearly implied "that the Security Council has the power to deal with matters arising out of such interim measures". The representative of the United Kingdom further contended that the Council had "special functions in relation to decisions of the Court" not only under Article 94 (2) of the Charter, but in connexion with Article 41 (2) of the Statute. He stated:⁴⁸

"It may of course be argued... that Article 94, paragraph 2, of the Charter only applies to final judgments of the Court and, consequently, not to decisions on interim measures... I can only point out that the whole object of interim measures—as, indeed, Article 41 of the Statute clearly indicates—is to preserve the respective rights of the parties pending the final decision; in other words, to prevent a situation from being created in which the final decision would be rendered inoperative or impossible of execution because of some step taken by one of the parties in the meantime with the object of frustrating that decision... It is, therefore, a necessary consequence, we suggest, of the bindingness of the final decision that the interim measures intended to preserve its efficacy should equally be binding."

At the 560th meeting on 15 October 1951, the representative of Iran* contended that, under Article 94 of the Charter, before a party to a case before the International Court of Justice was obliged to comply with a decision of the Court, that decision had to be final and binding. He further stated:⁴⁹

"If we look to Article 41 of the Statute of the Court, which confers on the latter power to indicate provisional measures, it appears that these cannot be final since Article 41 states that they are to be

suggested 'pending the final decision'. It is only to the final judgment, however, that the Statute (Article 59) attributes binding force. It is only the final judgment which is a binding decision, and it is only with respect to such binding decisions that Members of the United Nations have, by Article 94 of the Charter, given undertakings of compliance—and then only in cases to which they are parties.

"The United Kingdom representative [559th meeting], indeed, argues that there would be no point in making a final decision binding if one of the parties could frustrate that decision in advance and so render the final judgment nugatory. This is an argument *de lege ferenda* rather than one declaratory of existing law. Indeed, the language of Article 41 itself negatives the inference which the United Kingdom representative would have the Security Council draw. That language is exhortative and not obligatory. The provisional measures indicated by the Court would have binding force only if the parties were bound by an arbitration treaty expressly obligating them to respect such measures.

"The United Kingdom representative also attempts to derive the Security Council's authority from the provision in paragraph 2 of Article 41 of the Statute that the Court shall notify the Council of interim measures indicated by it. The inference is far-fetched and encounters the insuperable objection that an international instrument which concerns exclusively the rights and duties of the International Court cannot be construed to confer powers on the Security Council by implication. The meaning of the requirement of notice to the Security Council would appear to be obvious. It is designed to further that co-operation which is required of all organs of the United Nations. Situations may well be conceived in which it may be of interest or importance to the Security Council in the exercise of its own authority under the Charter—for it has none under the Statute—to be informed of provisional measures indicated by the Court."

The representative of Iran maintained that the Council had no competence to lend its authority to the provisional measures indicated by the International Court of Justice.⁵⁰ He recalled that his Government in their Note of 9 July 1951⁵¹ had informed the Secretary-General that, in their opinion, the indication of the Court was invalid in view of the fact that the Court had no jurisdiction in the case and because the indication was clearly outside the terms of the Iranian declaration of 2 October 1930, recognizing the compulsory jurisdiction of the Court, which the Government of Iran was withdrawing.⁵²

At the 560th meeting on 15 October 1951, the representative of the United Kingdom submitted a revised draft resolution⁵³ the preamble of which drew attention to the provisional measures indicated by the Court. By the operative clauses the Council was to resolve the differences between the parties,

"... in accordance with the principles of the provisional measures indicated by the International Court of Justice unless mutually agreeable arrange-

⁴⁸ 560th meeting: p. 11.

⁴⁹ U.N. Registry No. 46/04, (8).

⁵⁰ 560th meeting: p. 9.

⁵¹ S/2358/Rev.1, O.R., 6th year, Suppl. for Oct., Nov. and Dec. 1951, pp. 3-4.

⁴⁸ 559th meeting: p. 20.

⁴⁹ 560th meeting: p. 12.

ments are made consistent with the Purposes and Principles of the United Nations Charter.”

The representatives of India and Yugoslavia submitted amendments to the revised United Kingdom draft resolution⁵⁴ which, by the deletion of all reference to the provisional measures indicated by the Court, were designed to avoid the legal issues of the competence of the Council in respect of those measures.

The representative of Ecuador expressed inability to support the revised United Kingdom draft resolution as amended. He stated:⁵⁵

“In regard to the power of the Council under Article 94, paragraph 2, of the Charter to make recommendations or decide upon measures to be taken to give effect to a judgment rendered by the Court, it seems to me that the wording of Article 94 implies that the power of the Council comes into being only when the International Court of Justice gives a final judgment, and not when it merely indicates provisional measures, even though, according to the Court, these are intended to ensure that effect shall be given to a later final judgment.

“Consequently, the failure of a State to observe provisional measures indicated by the Court does not empower the Security Council to make recommendations under Article 94, paragraph 2, of the Charter. But . . . my Government would be prepared to vote in favour of a decision by the Council to refer this question to the Court itself; that is to say, the question whether the Council may make recommendations under Article 94, paragraph 2, of the Charter if one of the parties has failed to comply with provisional measures.”⁵⁶

ii. Competence of the International Court in relation to the competence of the Security Council

At the 559th meeting, during the discussion concerning competence in connexion with the adoption of the agenda, the representative of the United Kingdom maintained that the Court, in its finding on interim measures, had indicated that it considered that the case was, “at least *prima facie*, internationally justiciable, and not therefore a mere matter of domestic jurisdiction”. He was of the opinion that by Article 93 of the Charter “this decision of the Court regarding its jurisdiction is binding on all Members” and it followed that the Council had “the right and duty . . . to uphold” such obligations.

The representative of the United States stated that, because the question was the subject of litigation in the International Court of Justice, the Council had a reason for not accepting the objection that the matter was essentially within the domestic jurisdiction of Iran.

The representative of Yugoslavia maintained that the Council was not bound by decisions which other United Nations organs had taken with regard to competence.

The representative of India observed that the Court had not finally decided the question of jurisdiction. He stated:

“It may not therefore be wise or proper for us to pronounce on this question while substantially the same question is *sub judice* before the International Court of Justice. Just as the International Court of Justice indicated provisional measures without prejudging the question of jurisdiction, it may be possible for this Council also to ask for the resumption of negotiations between the parties without prejudging that question in any way.”

At the 562nd meeting on 17 October 1951, the representative of Ecuador considered that as the Court had not finally ruled on the question of competence it would be inadvisable for the Council to take a decision on this point at that time. He also maintained that, if the Court declared itself competent and gave a final judgment,

“ . . . then, if either Iran or the United Kingdom refuses to comply with the judgment, the other State will clearly be entitled to appeal to the Security Council in accordance with Article 94, paragraph 2, of the Charter. If, on the other hand, the Court decides that it is not competent because the case falls within the domestic jurisdiction, the Security Council should not then intervene in a legal matter, as this would be against the authority of the highest judicial organ of the United Nations.”

The representative of Ecuador submitted a draft resolution⁵⁷ to advise the re-opening of negotiations while expressly reserving the question of the Council's competence. He observed that he had inserted the second paragraph in the preamble, stating that “the Court is to express its opinion” on the question of jurisdiction, “because it gives the legal reason why we should not rule on our competence here and now”.⁵⁸ He was, however, willing to have this paragraph deleted, if the majority considered it undesirable.

At the 565th meeting on 19 October 1951, the representative of France proposed that the Security Council adjourn its debate until the International Court of Justice had ruled on its own competence in the matter.⁵⁹

The representative of the United Kingdom stated:

“I should think that any doubts of a legal character which rested with any members of the Council would be set at rest as regards the competence of this body if the Court should decide—I admit it may not decide—that it is in fact competent to deal with the matter and should therefore hand down its judgment. At that moment, I suggest there would be, or could be, no legal doubts left, about the competence of the Council in this matter . . .”

The representative of China stated:

“The competence of the Security Council and the competence of the International Court of Justice are not identical. Should the Court decide that it is not competent to render judgment on this question, that would not automatically mean that the Security Council is also not competent to deal with the question. On the other hand, should the Court decide that it is competent to render judgment on this question, that also would not automatically mean that the Security Council is competent.”

The representative of India stated that he supported the French proposal since “the question whether the

⁵⁴ S/2379, 561st meeting: pp. 15-16.

⁵⁵ 562nd meeting: p. 8.

⁵⁶ For texts of relevant statements see:

559th meeting: United Kingdom, p. 20.

560th meeting: Iran, pp. 9-12, 27; United Kingdom, p. 2.

561st meeting: India, p. 17; Iran, pp. 5, 7; United Kingdom, p. 23; Yugoslavia, pp. 18-19.

562nd meeting: Ecuador, pp. 5-6, 8-9.

⁵⁷ S/2380, 562nd meeting: p. 10.

⁵⁸ 562nd meeting: p. 10.

⁵⁹ 565th meeting: pp. 2-3.

matter is essentially domestic in character is now *sub judice*".

The French proposal was adopted.⁶⁰ In explaining his abstention, the representative of Yugoslavia stated:

"I had to abstain because I felt that the motion implied that the question of competence of the Security Council depends, at least to a certain degree, on the decision of another United Nations body, an opinion which I do not share."

⁶⁰ 565th meeting: p. 12.

The other draft resolutions were not put to the vote.⁶¹

⁶¹ For texts of relevant statements see:

559th meeting: Netherlands, p. 5; United Kingdom, p. 4; United States, p. 6; Yugoslavia, p. 3.

560th meeting: Iran, pp. 3, 9, 12.

562nd meeting: Ecuador, pp. 5-6.

563rd meeting: President (Brazil), p. 40; Netherlands, p. 32.

565th meeting: China, p. 5; Ecuador, p. 5; France, pp. 2-3; India, pp. 9-10; United Kingdom, pp. 6-7; Yugoslavia, p. 13.

Part V

RELATIONS WITH THE MILITARY STAFF COMMITTEE

NOTE

The material in this part consists of evidence from the Official Records of the Security Council regarding the constitutional relations of the Security Council and the Military Staff Committee. Decisions of the Council on reports of the Military Staff Committee in the discharge of its functions are entered in chapter IX. Material bearing on Article 43 of the Charter is inserted in chapter XI.

The draft statute and draft rules of procedure of the Military Staff Committee, submitted to the Security Council on 14 February 1946, were issued as restricted documents.¹ Certain matters relating to the draft statute

and the draft rules of procedure were taken up in correspondence between the Secretary-General and the Military Staff Committee,² as a result of which a revised draft statute and revised draft rules of procedure were transmitted to the Council on 1 August 1946.³ The draft statute and draft rules having been referred to the Committee of Experts by directives of the Security Council of 16 February and 26 March 1946,⁴ questions relating to these documents were the subject of further correspondence between the Committee of Experts and the Military Staff Committee.⁵ The report of the Committee of Experts was issued on 17 July 1947.⁶

Article 47 (1) and 47 (2) of the Charter

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

CASE 30

At the 2nd meeting on 25 January 1946, the Security Council adopted the draft directive to the Military Staff Committee proposed by the Preparatory Commission⁷ which read as follows:⁸

"By Article 47 of the Charter the United Nations have agreed that there shall be established a Military Staff Committee to advise and assist the Security Council, and that the Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives.

"Therefore

"1. The Security Council requests the permanent members of the Security Council to direct their Chiefs of Staff to meet or to appoint representatives who shall meet at London prior to 1 February 1946;

"2. The Security Council directs that the Chiefs of Staff or their representatives when so assembled shall constitute the Military Staff Committee referred to above;

"3. The Security Council directs the Military Staff Committee thereupon as its first task to draw up proposals for its organization (including the appropriate secretariat staff) and procedure and to submit these proposals to the Security Council."

At the 23rd meeting on 16 February 1946, the Council requested the Military Staff Committee to meet in New York simultaneously with the first meeting of the Council at the temporary headquarters, and the Military Staff Committee was directed as to the first task it should undertake.⁹

CASE 31

By letter dated 14 February 1946,¹⁰ the Chairman of the Military Staff Committee informed the Presi-

¹ S/10 (Restricted).

² S/124, S/124/Add.1 (Restricted).

³ S/115 (Restricted).

⁴ 23rd meeting: p. 369; 25th meeting: p. 10.

⁵ S/165, S/187, S/325, S/356 (Restricted).

⁶ S/421 (Restricted).

⁷ 2nd meeting: p. 14.

⁸ O.R., 1st year, 1st series, Suppl. No. 1; annex 1a, section 3, pp. 2-3.

⁹ 23rd meeting: p. 369.

¹⁰ S/10, (Restricted).

dent of the Security Council that, in accordance with the Council's directive of 25 January 1946, the Military Staff Committee had been established on 4 February 1946. The letter forwarded a draft statute of the Military Staff Committee, and draft rules of procedure for the Military Staff Committee and its secretariat. At the 23rd meeting on 16 February 1946, the Council decided to refer the draft statute and the draft rules of procedure to the Committee of Experts. It was also agreed that "pending the approval by the Council of the rules of procedure and of the statute of the Military Staff Committee it be authorized to carry on provisionally along the lines of the proposals which it has submitted".¹¹

CASE 32

At the 141st meeting on 16 June 1947, a proposal was made to request the Military Staff Committee to continue its work concurrently with the examination of its report by the Security Council, and without waiting for a decision on all the existing points of disagreement.¹² The representative of the United States considered that "it would be useful if the Military Staff Committee could be requested by the Council to continue its work on the military aspects of our problem simultaneously with the consideration which the Council will give in detail to the present report".¹³ The President (France), though in agreement with the representative of the USSR that the Military Staff Committee was already engaged on this work, was of the opinion that "it would be desirable that the work now being done by the Military Staff Committee should be based on a decision by the Security Council".¹⁴ The representative of Australia pointed out that the members of the Military Staff Committee were present at the Council's meeting, and not in session themselves, so that, if a matter arising out of the Military Staff Committee's report was referred back to it, it would have a full knowledge of the discussion in the Council.¹⁵

The representative of Poland suggested that, while the report was being discussed, the Military Staff Committee should review the points on which it had been unable to agree and, if it were possible for it to seek agreement, the Security Council should be informed during the discussion. He then said:¹⁶

"The Military Staff Committee consists of the permanent members of the Council. I think that the work of the non-permanent members would be substantially facilitated if some of the points of disagreement among the permanent members could, in the meantime, be settled in the Military Staff Committee."

The President thereupon remarked:¹⁷

"I do not think that it is for the Security Council to make suggestions regarding the organization of the Military Staff Committee's work. The request made by the Polish representative has been heard, but I do not think it is within the Security Council's competence to take a decision in this connexion."

¹¹23rd meeting: p. 369. The Military Staff Committee has continued to function under the terms of the draft statute and the draft rules of procedure.

¹²141st meeting: p. 1018. See 104th meeting, pp. 233, 237, for observations concerning lack of information on the work of the Committee.

¹³141st meeting: p. 1018.

¹⁴141st meeting: p. 1018.

¹⁵141st meeting: p. 1018.

¹⁶141st meeting: p. 1019.

¹⁷141st meeting: p. 1019.

The representative of Australia then stated:¹⁸

"I take it that the Military Staff Committee is purely the advisor of the Council, and that we can give it instructions accordingly. . . ."

"If we, as the Council, make a decision that the Military Staff Committee shall reconsider those items on which there is disagreement, we, as the Council, are fully entitled to take that or any other decision."

The President considered that he was not in disagreement with this view but, if he had understood the Polish statement, it did not purport to refer the question to the Military Staff Committee at once, but to ask the Committee for an additional exchange of views among its members.¹⁹

The proposal that the Military Staff Committee continue its work concurrently with the consideration of the report by the Council was adopted.²⁰

CASE 33

At the 145th meeting on 24 June 1947, the Security Council decided to consult the Military Staff Committee on article 18 of its report. In this connexion, the representative of Australia stated that under the relevant Articles of the Charter "the Military Staff Committee is to assist and advise this Council", and he contended that "a member, particularly a non-permanent member, should at least be given the courtesy or have the right, if it so desires, to ask for interpretation, explanation, or assistance".

He said:²¹

"If the question comes to a vote, to which we object in principle, it means that we do not have the right to obtain the benefit of that advice. . . . If a vote is taken, it means that that right can be overruled."

He further stated that the right of members of the Council to ask questions or seek clarification from the Military Staff Committee should be "recognized as a matter of course", and "there should be no objection, particularly on the part of a permanent member. . . ."²²

CASE 34

The report of the Military Staff Committee on the implementation of Article 43 was included in the agenda of the Security Council at the 138th meeting. In the consideration of the report certain questions of procedure arose.

At the 139th meeting on 6 June 1947, the representative of Australia said that members of the Security Council, who shared the primary responsibility for the maintenance of international peace and security, must be "fully and constantly apprised of the progress which has been made in the organization of the armed forces" of the United Nations. He pointed out that the Military Staff Committee had been meeting in secret for over a year, and, "apart from brief communiqués which indicated little beyond the fact that there were disagreements among members, no information has been available to the non-permanent members of the Council as to the matters under discussion. He said

¹⁸141st meeting: p. 1019.

¹⁹141st meeting: p. 1019.

²⁰141st meeting: p. 1018.

²¹145th meeting: p. 1090.

²²145th meeting: p. 1090.

it was impossible under these conditions for the non-permanent members of the Council to discharge their obligations under the Charter, and his Government believed that they should be associated with the Military Staff Committee during their term of office. He remarked that non-permanent members of the Security Council could not even attend the Military Staff Committee as observers, and all attempts in the Committee of Experts to amend the rules of procedure of the Military Staff Committee to make this possible had been without success.²³

At the 142nd meeting on 18 June 1947, during the detailed discussion of the Military Staff Committee's report, a proposal was made that articles 5 and 6 be referred back to the Committee. In this connexion the representative of the United States opined that it would facilitate the work of the Military Staff Committee if the Council took a positive decision on the two articles and did not refer them back to the Committee.²⁴

The President (France) then proposed that the Chairman of the Military Staff Committee or his representative could be invited to the Council table to offer any explanation.²⁵ The Chairman of the Military

Staff Committee took his place at the Council table. The representative of the USSR expressed doubt whether the Chairman could give an interpretation of an article of the Committee's report, and whether he could do so in the name of the other four members of the Military Staff Committee. He said that specific questions should be put to the Military Staff Committee for answer, and that it should be approached directly since it was functioning. He doubted if the Chairman of the Military Staff Committee "no matter what country he represents" could supply an interpretation if the Committee had not agreed on it.²⁶

The President thereafter addressed two letters²⁷ to the Military Staff Committee requesting clarification of articles 5 and 6 of its report in line with questions raised in the Council. In partial reply a letter dated 19 June 1947 was received from the Chairman of the Military Staff Committee and placed before the Council at the 143rd meeting, in the course of which another letter dated 20 June, agreed to by four members excepting the USSR, was received from the Military Staff Committee in answer to questions not treated in the first letter.²⁸

²³ 139th meeting: pp. 983-984.

²⁴ 142nd meeting: p. 1036.

²⁵ 142nd meeting: p. 1037.

²⁶ 142nd meeting: p. 1038.

²⁷ S/380, 143rd meeting: p. 1053.

²⁸ 143rd meeting: pp. 1054, 1061-1062.